

CHAPTER 349

BINGO, GAMBLING DEVICES, AND VIDEO GAMES
OF CHANCE

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349.11 PURPOSE.

The purpose of sections 349.11 to 349.22 is to regulate lawful gambling to prevent its commercialization, to insure integrity of operations, and to provide for the use of net profits only for lawful purposes.

History: 1989 c 334 art 2 s 1

349.12 DEFINITIONS.

[For text of subs 1 and 2, see M.S.1988]

Subd. 3. **Active member.** "Active member" means a member who has paid all dues to the organization, who is 18 years of age or older, who has equal voting rights with all other members, who has equal opportunity to be an elected officer, who has equal right and responsibilities of attendance at the regularly scheduled meetings of the organization, whose name and membership origination date appear with the member's knowledge and consent on a list of members of the organization, and who has been a member of the organization for at least six months.

[For text of subs 4 to 10, see M.S.1988]

Subd. 11. (a) "Lawful purpose" means one or more of the following: (1) benefiting persons by enhancing their opportunity for religious or educational advancement, by relieving or protecting them from disease, suffering or distress, by contributing to their physical well-being, by assisting them in establishing themselves in life as worthy and useful citizens, or by increasing their comprehension of and devotion to the principles upon which this nation was founded; (2) initiating, performing, or fostering worthy public works or enabling or furthering the erection or maintenance of public structures; (3) lessening the burdens borne by government or voluntarily supporting, augmenting or supplementing services which government would normally render to the people; (4) payment of taxes imposed under this chapter, and other taxes imposed by the state or the United States on receipts from lawful gambling; (5) any expenditure by, or any contribution to, a hospital or nursing home exempt from taxation under section 501(c)(3) of the Internal Revenue Code; or (6) payment of reasonable costs incurred in complying with the performing of annual audits required under section 349.19, subdivision 9.

(b) "Lawful purpose" does not include the erection, acquisition, improvement, expansion, repair, or maintenance of any real property or capital assets owned or leased by an organization, other than a hospital or nursing home exempt from taxation under section 501(c)(3) of the Internal Revenue Code, unless the board has first specifically

authorized the expenditures after finding: (1) that the property or capital assets will be used exclusively for one or more of the purposes specified in paragraph (a), clauses (1) to (3); or (2) with respect to expenditures for repair or maintenance only, that the property is or will be used extensively as a meeting place or event location by other nonprofit organizations or community or service groups and that no rental fee is charged for the use; or (3) with respect to expenditures for erection or acquisition only, that the erection or acquisition is necessary to replace with a comparable building a building owned by the organization and destroyed or made uninhabitable by fire or natural disaster, provided that the expenditure may be only for that part of the replacement cost not reimbursed by insurance. The board may by rule adopt procedures and standards to administer this subdivision.

Subd. 12. Organization. "Organization" means any fraternal, religious, veterans, or other nonprofit organization which has at least 15 active members, and either has been duly incorporated as a nonprofit organization for at least three years, or has been recognized by the Internal Revenue Service as exempt from income taxation for the most recent three years.

Subd. 13. Gross profit. "Gross profit" means the gross receipts collected from lawful gambling, less reasonable sums necessarily and actually expended for prizes.

Subd. 13a. Net profit. "Net profit" means gross profit less reasonable sums actually expended for allowable expenses.

[For text of subd 14, see M.S.1988]

Subd. 15. Gambling equipment. "Gambling equipment" means: bingo cards or sheets, devices for selecting bingo numbers, pull-tabs, jar tickets, paddlewheels, and tipboards.

Subd. 16. Board. "Board" is the gambling control board.

Subd. 17. Distributor. "Distributor" is a person who sells gambling equipment within the state to licensed organizations, to organizations conducting exempt activities under section 349.214, or to other distributors.

[For text of subds 18 and 19, see M.S.1988]

Subd. 20. Ideal net. "Ideal net" means the pull-tab or tipboard deal's ideal gross, as defined under subdivision 19, less the total predetermined prize amounts available to be paid out. When the prize is not entirely a monetary one, the ideal net is 50 percent of the ideal gross.

Subd. 21. Capital assets. "Capital assets" means property, real or personal, except gambling equipment, with an expected useful life of at least one year.

Subd. 22. Director. "Director" is the director of the division of gambling control.

Subd. 23. Manufacturer. "Manufacturer" means a person or entity who assembles from raw materials or subparts a completed piece of gambling equipment, and who sells or furnishes the equipment for resale or for use in the state. The term includes a person who converts, modifies, adds to, or removes parts or a portion from an item, device, or assembly to further its promotion, sale, or use as gambling equipment in this state. A person only adding or modifying promotional flares to advise the public of the prizes available, the rules of play, and the consideration required is not a manufacturer.

Subd. 24. Promotional ticket. A pull-tab or tipboard ticket with the words "no purchase necessary" and "for promotional use only" and for which no consideration is given is a promotional ticket.

Subd. 25. Division. "Division" is the division of gambling control in the department of gaming.

History: 1989 c 203 s 1; 1989 c 334 art 2 s 2-15

349.15 USE OF GROSS PROFITS.

(a) Gross profits from lawful gambling may be expended only for lawful purposes

or allowable expenses as authorized at a regular meeting of the conducting organization. Provided that no more than 55 percent of gross profits from bingo, and no more than 45 percent for other forms of lawful gambling, may be expended for allowable expenses related to lawful gambling.

(b) The board shall provide by rule for the administration of this section, including specifying allowable expenses. The rules must specify that no more than one-third of the annual premium on a policy of liability insurance procured by the organization may be taken as an allowable expense. This expense shall be allowed by the board only to the extent that it relates directly to the conduct of lawful gambling and is verified in the manner the board prescribes by rule. The rules may provide a maximum percentage of gross profits which may be expended for certain expenses.

(c) Allowable expenses also include reasonable costs of bank account service charges, and the reasonable costs of an audit required by the board, except an audit required under section 349.19, subdivision 9.

(d) Allowable expenses include reasonable legal fees and damages that relate to the conducting of lawful gambling, except for legal fees or damages incurred in defending the organization against the board, attorney general, United States attorney, commissioner of revenue, or a county or city attorney.

History: 1989 c 203 s 2; 1989 c 334 art 2 s 16

349.151 GAMBLING CONTROL BOARD.

Subdivision 1. Board created. The gambling control board is created with the powers and duties established by subdivision 4.

Subd. 2. Membership. The board consists of six members appointed by the governor with the advice and consent of the senate and the commissioner of gaming as a voting member. Of the members first appointed, one is for a term expiring June 30, 1990, two are for a term expiring June 30, 1991, two are for a term expiring June 30, 1992, and one is for a term expiring June 30, 1993. After expiration of the initial terms, appointments are for four years. The board shall select one of its members, other than the commissioner, to serve as chair. No more than three members appointed by the governor under this subdivision may belong to the same political party.

Subd. 3. [Repealed, 1989 c 334 art 2 s 52]

Subd. 4. Powers and duties. (a) The board has the following powers and duties:

(1) to issue, revoke, and suspend licenses to organizations, distributors, bingo halls, and manufacturers under sections 349.16, 349.161, 349.163, and 349.164;

(2) to collect and deposit license fees due under this chapter;

(3) to receive reports required by this chapter and inspect the records, books, and other documents of organizations and suppliers to insure compliance with all applicable laws and rules;

(4) to make rules required by this chapter;

(5) to register gambling equipment and issue registration stamps under section 349.162;

(6) to provide by rule for the mandatory posting by organizations conducting lawful gambling of rules of play and the odds and/or house percentage on each form of lawful gambling;

(7) to report annually to the governor and legislature on its activities and on recommended changes in the laws governing gambling;

(8) impose civil penalties of not more than \$500 per violation on organizations, distributors, and manufacturers for failure to comply with any provision of sections 349.12 to 349.23 or any rule of the board;

(9) to notify city councils, county boards, and town boards before issuing or renewing licenses to organizations and bingo halls as specified under section 349.213; and

(10) delegate to the director the authority to issue licenses under criteria established by the board.

(b) Any organization, distributor, bingo hall operator, or manufacturer assessed a civil penalty may request a hearing before the board. Hearings conducted on appeals of imposition of penalties are not subject to the provisions of the administrative procedure act.

(c) All fees and penalties received by the board must be deposited in the general fund.

Subd. 4a. Additional powers. Whenever it appears to the director that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule:

(a) The director has the power to issue and cause to be served upon the person an order requiring the person to cease and desist from violations of this chapter. The order must give reasonable notice of the rights of the person to request a hearing and must state the reason for the entry of the order. A hearing shall be held not later than seven days after the request for the hearing is received by the board after which and within 20 days of the date of the hearing the board shall issue an order vacating the cease and desist order or making it permanent as the facts require. All hearings shall be conducted in accordance with the provisions of chapter 14. If the person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, the person shall be deemed in default, and the proceeding may be determined against the person upon consideration of the cease and desist order, the allegations of which may be deemed to be true.

(b) The board may bring an action in the district court in the appropriate county to enjoin the acts or practices and to enforce compliance with this chapter or any rule and may refer the matter to the attorney general. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted. The court may not require the board to post a bond.

Subd. 5. [Repealed, 1989 c 334 art 2 s 52]

Subd. 5. Attorney general. The attorney general is the attorney for the board.

Subd. 6. [Renumbered subdivision 5]

History: 1989 c 334 art 2 s 17

NOTE: Subdivision 3 was also amended by Laws 1989, chapter 334, article 2, section 17, to read as follows:

"Subd. 3. **Compensation.** The compensation, and removal of board members and filling of membership vacancies are as provided in section 15.0575 except for the commissioner of gaming."

349.152 DIRECTOR.

Subdivision 1. Appointed. The governor shall appoint, with the advice and consent of the senate, a director from a list of one or more persons submitted by the board. The director serves in the unclassified service at the pleasure of the governor.

Subd. 2. Duties of the director. The director has the following duties:

- (1) to carry out gambling policy established by the board;
- (2) to employ and supervise personnel of the board;
- (3) to advise and make recommendations to the board on rules;
- (4) to issue licenses as authorized by the board;
- (5) to issue cease and desist orders;
- (6) to make recommendations to the board on license issuance, denial, suspension and revocation, and civil penalties the board imposes; and
- (7) to ensure that board rules, policy, and decisions are adequately and accurately conveyed to the board's licensees.

History: 1989 c 334 art 2 s 18

349.153 CONFLICT OF INTEREST.

(a) A person may not serve on the board, be the director, or be an employee of the division who has an interest in any corporation, association, or partnership that is

licensed by the board as a distributor, manufacturer, or a bingo hall under section 349.164.

(b) A member of the board, the director, or an employee of the division may not participate in the conducting of lawful gambling.

History: 1989 c 334 art 2 s 19

349.16 ORGANIZATION LICENSES.

[For text of subs 1 and 2, see M.S.1988]

Subd. 3. Fees. The board may issue four classes of licenses: a class A license authorizing all forms of lawful gambling; a class B license authorizing all forms of lawful gambling except bingo; a class C license authorizing bingo only; and a class D license authorizing raffles only. The annual license fee for each class of license is:

- (1) \$200 for a class A license;
- (2) \$125 for a class B license;
- (3) \$100 for a class C license; and
- (4) \$75 for a class D license.

Subd. 4. Local investigation fee. A statutory or home rule charter city or county notified under section 349.213, subdivision 2, may assess an investigation fee on organizations or bingo halls applying for or renewing a license to conduct lawful gambling or operate a bingo hall. An investigation fee may not exceed the following limits:

- (1) for cities of the first class, \$500;
- (2) for cities of the second class, \$250;
- (3) for all other cities, \$100; and
- (4) for counties, \$375.

History: 1989 c 334 art 2 s 20,21

349.161 DISTRIBUTOR LICENSES.

Subdivision 1. Prohibited acts; licenses required. No person may:

(1) sell, offer for sale, or furnish gambling equipment for use within the state for gambling purposes, other than for lawful gambling exempt from licensing under section 349.214, except to an organization licensed for lawful gambling; or

(2) sell, offer for sale, or furnish gambling equipment to an organization licensed for lawful gambling without having obtained a distributor license under this section.

No licensed organization may purchase gambling equipment from any person not licensed as a distributor under this section.

Subd. 2. License application. The board may issue licenses for the sale of gambling equipment to persons who meet the qualifications of this section if the board determines that a license is consistent with the purpose of sections 349.11 to 349.22. Applications must be on a form the board prescribes.

Subd. 3. Qualifications. A license may not be issued under this section to a person, or to a corporation, firm, or partnership which has as an officer, director, other person in a supervisory or management position, or employee eligible to make sales on behalf of the distributor a person, who:

- (1) has been convicted of a felony within the past five years;
- (2) has ever been convicted of a felony involving fraud or misrepresentation or a crime involving gambling;
- (3) is or has ever been engaged in an illegal business;
- (4) owes \$500 or more in delinquent taxes as defined in section 270.72;
- (5) has had a sales and use tax permit revoked by the commissioner of revenue within the last two years; or

(6) after demand, has not filed tax returns required by the commissioner of revenue.

Subd. 4. **Fees.** The annual fee for a distributor's license is \$2,500.

Subd. 5. **Prohibition.** (a) No distributor, or employee of a distributor, may also be a wholesale distributor of alcoholic beverages or an employee of a wholesale distributor of alcoholic beverages.

(b) No distributor, distributor's representative, or employee of a distributor, may be involved directly in the operation of lawful gambling conducted by an organization.

(c) No manufacturer or distributor or person acting as a representative, agent, or employee of a manufacturer or distributor may provide a lessor of gambling premises any compensation, gift, gratuity, premium, or other thing of value.

(d) No distributor, distributor's representative, or employee of a distributor may participate in any gambling activity at any gambling site or premises where gambling equipment purchased from that distributor is being used in the conduct of lawful gambling.

(e) No distributor, distributor's representative, or employee of a distributor may alter or modify any gambling equipment, except to add a "last ticket sold" prize sticker.

Subd. 6. **Revocation and suspension.** A license under this section may be suspended by the board for a violation of law or board rule or for failure to meet the qualifications in subdivision 3 at any time or revoked for what the board determines to be a pattern of willful violations of law or board rule. A revocation or suspension is a contested case under sections 14.57 to 14.69 of the administrative procedure act.

Subd. 7. **Criminal history.** The board may request the assistance of the division of gambling enforcement in investigating the background of an applicant for a distributor's license and may reimburse the division of gambling enforcement for the costs thereof. The board has access to all criminal history data compiled by the division of gambling enforcement on licensees and applicants.

Subd. 8. **Employees of distributors.** Licensed distributors shall provide the board upon request with the names and home addresses of all employees. Each distributor, employee of a distributor, or a person making sales of gambling equipment on behalf of a distributor must have in their possession a picture identification card approved by the board.

History: 1989 c 334 art 2 s 22

349.162 EQUIPMENT REGISTERED.

Subdivision 1. **Stamp required.** A distributor may not sell, transfer, furnish, or otherwise provide to a person, organization, or distributor, and no person, organization, or distributor may purchase, borrow, accept, or acquire from a distributor gambling equipment unless the equipment has been registered with the board and has a registration stamp affixed. The board shall charge a fee of five cents for each stamp. Each stamp must bear a registration number assigned by the board. A distributor is entitled to a refund for unused stamps and replacement for stamps which are defective or canceled by the distributor.

Subd. 2. **Records required.** A distributor must maintain a record of all gambling equipment which it sells to organizations. The record must include:

- (1) the identity of the person or firm from whom the equipment was purchased;
- (2) the registration number of the equipment;
- (3) the name and address of the organization to which the sale was made;
- (4) the date of the sale;
- (5) the name of the person who ordered the equipment; and
- (6) the name of the person who received the equipment.

The invoice for each sale must be retained for at least two years after the sale is completed and a copy of each invoice is to be delivered to the board in the manner and

time prescribed by the board. For purposes of this section, a sale is completed when the gambling equipment is physically delivered to the purchaser.

Each distributor must report monthly to the board, in a form the board prescribes, its sales of each type of gambling equipment. Employees of the division and the division of gambling enforcement may inspect the books, records, and other documents of a distributor at any reasonable time without notice and without a search warrant.

Subd. 3. Exemption. For purposes of this section, bingo cards or sheets need not be stamped.

Subd. 4. Prohibition. (a) No person other than a licensed distributor may possess unaffixed registration stamps issued by the board.

(b) Unless otherwise provided in this chapter, no person may possess gambling equipment that has not been registered with the board.

Subd. 5. Sales from facilities. (a) All gambling equipment purchased or possessed by a licensed distributor for resale in Minnesota must, prior to the equipment's resale, be unloaded into a sales or storage facility located in Minnesota which the distributor owns or leases; and which has been registered, in advance and in writing, with the division of gambling enforcement as a sales or storage facility of the distributor's. All unregistered gambling equipment and all unaffixed registration stamps owned by, or in the possession of, a licensed distributor in the state of Minnesota shall be stored at a sales or storage facility which has been registered with the division of gambling enforcement. No gambling equipment may be moved from the facility unless the gambling equipment has been first registered with the board.

(b) All sales and storage facilities owned, leased, used, or operated by a licensed distributor may be entered upon and inspected by the employees of the division of gambling enforcement or the director's authorized representatives during reasonable and regular business hours. Obstruction of, or failure to permit, entry and inspection is cause for revocation or suspension of a distributor's licenses and permits issued under this chapter.

(c) Unregistered gambling equipment and unaffixed registration stamps found at any location in Minnesota other than a registered sales or storage facility are contraband under section 349.2125.

History: 1989 c 334 art 2 s 23

349.163 LICENSING OF MANUFACTURERS.

Subdivision 1. License. No manufacturer of gambling equipment may sell any gambling equipment to any person unless the manufacturer has been issued a license by the board under objective criteria prescribed by the board by rule.

Subd. 2. License; fee. A license under this section is valid for one year. The annual fee for the license is \$2,500.

Subd. 3. Prohibited sales. A manufacturer may not sell gambling equipment to any person not licensed as a distributor unless the manufacturer is also a licensed distributor.

Subd. 4. Inspection of manufacturers. Employees of the division and the division of gambling enforcement may inspect the books, records, inventory, and manufacturing operations of a licensed manufacturer without notice during the normal business hours of the manufacturer.

History: 1989 c 334 art 2 s 24

349.164 BINGO HALL LICENSES.

Subdivision 1. License required. No person may lease a facility to more than one individual, corporation, partnership, or organization to conduct bingo without having obtained a bingo hall license under this section, unless the lessor is a licensed organization.

Subd. 2. License application. The board may issue a bingo hall license to persons

who meet the qualifications of this section if the board determines that a license is consistent with the purpose of sections 349.11 to 349.22. Applications must be on a form the board prescribes. The board may not issue or renew a bingo hall license unless the conditions of section 349.213, subdivision 2, have been satisfied.

Subd. 3. Qualifications. A license may not be issued under this section to a person, or to a corporation, firm, or partnership which has as an officer, director, or other person in a supervisory or management position, who:

- (1) has been convicted of a felony within the past five years;
- (2) has ever been convicted of a felony involving fraud or misrepresentation or a crime involving gambling; or
- (3) owes delinquent taxes in excess of \$500 as defined in section 270.72.

Subd. 4. Fees. The annual fee for a bingo hall license is \$2,500.

Subd. 5. Criminal history. The board may request the assistance of the division of gambling enforcement in investigating the background of an applicant for a bingo hall license and may reimburse the division of gambling enforcement for the costs. The board has access to all criminal history data compiled by the bureau of criminal apprehension and the division of gambling enforcement on licensees and applicants.

Subd. 6. Prohibition. No bingo hall licensee may also be a licensed distributor or licensed manufacturer or affiliate of the distributor or manufacturer under section 349.161 or 349.163 or a wholesale distributor of alcoholic beverages.

Subd. 7. Restrictions. A bingo hall licensee or affiliate of the licensee may not:

- (1) provide any staff to conduct bingo or any other form of lawful gambling during the bingo occasion;
- (2) acquire, provide storage or inventory control, or report the use of any gambling equipment used by an organization that conducts bingo on the premises;
- (3) provide accounting services to an organization conducting bingo on the premises;
- (4) make any expenditures of gross receipts of an organization from lawful gambling; or
- (5) charge any fee to a person at a bingo occasion, without which the person could not play a bingo game.

Subd. 8. Leases. All of the remuneration to be received from the organization for the conduct of lawful gambling must be stated in the lease. No amount may be paid by the organization or received by the operator of the bingo hall based on the number of participants attending the bingo occasion or on the gross receipts or profit received by the organization.

Subd. 9. Revocation and suspension. A license under this section may be suspended by the board for a violation of law or board rule or for failure to meet the qualifications in subdivision 3 at any time or revoked for what the board determines to be a pattern of willful violations of law or board rule. A revocation or suspension is a contested case under sections 14.57 to 14.69 of the administrative procedure act.

History: 1989 c 334 art 2 s 25

349.17 CONDUCT OF BINGO.

[For text of subds 1 and 2, see M.S.1988]

Subd. 2a. Distributor license exemption for lessor. As part of a lease agreement on a leased bingo premises, the lessor may furnish bingo equipment without being a licensed distributor. For purposes of this section, "furnish" does not include the right to sell or offer for sale.

[For text of subds 3 and 4, see M.S.1988]

History: 1989 c 334 art 2 s 26

349.171 [Repealed, 1989 c 334 art 2 s 52]

349.18 PREMISES USED FOR GAMBLING.

Subdivision 1. **Lease or ownership required.** An organization may conduct lawful gambling only on premises it owns or leases. Leases must be for a period of one year and must be in writing. Copies of all leases must be made available to employees of the division and the division of gambling enforcement on request. A lease may not provide for payments determined directly or indirectly by the receipts or profits from lawful gambling. The board may prescribe by rule limits on the amount of rent which an organization may pay to a lessor for premises leased for lawful gambling. Any rule adopted by the board limiting the amount of rent to be paid may only be effective for leases entered into, or renewed, after the effective date of the rule.

No person, distributor, manufacturer, lessor, or organization other than the licensed organization leasing the space may conduct any activity in a leased space during times when lawful gambling is being conducted in the space.

Subd. 1a. **Storage of gambling equipment.** (a) Gambling equipment owned by or in the possession of a licensed organization must be kept at a licensed gambling premises owned or operated by the organization, or at other storage sites within the state that the organization has notified the board are being used as gambling equipment storage sites. At each storage site or licensed premises, the organization must have the invoices or true and correct copies of the invoices for the purchase of all gambling equipment at the site or premises.

(b) Gambling equipment, other than devices for selecting bingo numbers, owned by a licensed organization must be kept separate from gambling equipment owned by other persons, organizations, distributors, or manufacturers consistent with the organization's internal controls filed with the board.

(c) Gambling equipment kept in violation of this subdivision is contraband under section 349.2125.

(d) A licensed organization may transport gambling equipment it owns or possesses between approved gambling equipment storage sites and to and from licensed distributors.

[For text of subs 2 and 3, see M.S.1988]

History: 1989 c 334 art 2 s 27,28

349.19 RECORDS AND REPORTS.

[For text of subd 1, see M.S.1988]

Subd. 2. **Accounts.** Gross receipts from lawful gambling by each organization at each licensed premises must be segregated from all other revenues of the conducting organization and placed in a separate account. The name and address of the bank and the account number for that separate account for that licensed premises, and the names of organization members authorized as signatories on the separate account must be provided to the board when the application is submitted. Changes in the information must be submitted to the board at least ten days before the change is made. Gambling receipts must be deposited into the gambling bank account within one business day of completion of the bingo occasion, deal, or game from which they are received, and deposit records must be sufficient to allow determination of deposits made from each bingo occasion, deal, or game. The person who accounts for gambling gross receipts and profits may not be the same person who accounts for other revenues of the organization.

Subd. 3. **Expenditures.** All expenditures of gross profits from lawful gambling must be itemized as to payee, purpose, amount, and date of payment. Authorization of the expenditures must be recorded in the regular meeting minutes of the licensed organization.

[For text of subds 4 and 5, see M.S.1988]

Subd. 6. Preservation of records. The board may require that records required to be kept by this section must be preserved by a licensed organization for at least two years and may be inspected by employees of the division and the division of gambling enforcement at any reasonable time without notice or a search warrant.

[For text of subd 7, see M.S.1988]

Subd. 8. Termination plan. Upon termination of a license for any reason, a licensed organization must notify the board in writing within 15 calendar days of the license termination date of its plan for disposal of registered gambling equipment and distribution of remaining gambling proceeds. Before implementation, a plan must be approved by the board. The board may accept or reject a plan and order submission of a new plan or amend a proposed plan. The board may specify a time for submission of new or amended plans or for completion of an accepted plan.

Subd. 9. Annual audit; filing requirement. An organization licensed under this chapter must have an annual financial audit of its lawful gambling activities and funds performed by an independent auditor licensed by the state of Minnesota or performed by an independent accountant who has had prior approval of the board. A complete, true, and correct copy of the audit report must be filed with the board upon completion of the audit.

History: 1989 c 334 art 2 s 29-33

349.20 MANAGERS.

(a) All lawful gambling conducted by a licensed organization must be under the supervision of one or more gambling managers. A gambling manager designated by an organization to supervise a gambling occasion is responsible for the gross receipts from the occasion and for its conduct in compliance with all laws and rules. An organization may designate a different person to act as manager for each type of lawful gambling conducted. Each person designated as a gambling manager must give a fidelity bond in the sum of \$10,000 in favor of the organization conditioned on the faithful performance of the manager's duties, and the terms of the bond must provide that notice be given to the board in writing not less than 30 days before its cancellation.

(b) A person may not act as a gambling manager for more than one organization.

(c) An organization may not conduct lawful gambling without having a gambling manager. The board must be notified in writing of a change in gambling managers. Notification must be made within ten days of the date the gambling manager assumes the manager's duties.

History: 1989 c 334 art 2 s 34

349.21 COMPENSATION.

Subdivision 1. To whom paid. Compensation to persons who participate in the conduct of lawful gambling may be paid only to active members of the conducting organization or its auxiliary, or the spouse or surviving spouse of an active member, except that nonmanagement assistants who are not active members or spouses may be hired to assist in the conduct of lawful gambling in nonmanagement positions if approved by a majority of the organization's members.

Subd. 2. Amounts paid. The amounts of compensation which may be paid under this section may be provided for in a schedule of compensation adopted by the board by rule. In adopting a schedule the board must consider the nature of the participation and the types of lawful gambling participated in.

Subd. 3. Compensation records. An organization paying compensation to persons for the conduct of lawful gambling must maintain a compensation record. The record must be retained for at least two years after the month in which the compensation is paid. The record must be an itemization of each payment made to each recipient of

compensation and must include the amount of compensation paid and the full name, home address, and membership status of each recipient.

Subd. 4. Compensation paid by check. Compensation paid by an organization in connection with lawful gambling must be in the form of a check drawn on the organization's gambling account, as specified in section 349.19.

Subd. 5. Penalty. (a) An organization that makes payment of compensation, or causes compensation to be made, which violates the provisions of subdivision 4 shall be assessed a civil penalty not to exceed \$1,000 for each violation of subdivision 4. A second violation within 12 months of notification by the board to the organization of the first violation shall result in suspension of the organization's gambling license for a period of three months, in addition to any civil penalty assessed. A third violation within 12 months of the board's notification to the organization of the second violation shall result in revocation of the organization's gambling license in addition to any civil penalty assessed.

(b) Upon each violation the director shall notify the organization in writing of its violation and of the penalties under this subdivision for future violations. Notification is effective upon mailing.

(c) For purposes of this subdivision, a violation consists of a payroll period or compensation date that includes payments made in violation of subdivision 4.

Subd. 6. Percentage of gross profit paid. A licensed organization may pay a percentage of the gross profit from raffle ticket sales to a nonprofit organization which sells tickets for the licensed organization.

Subd. 7. Direct payment. All compensation must be paid directly from the organization to the employees of the organization.

History: 1989 c 334 art 2 s 35

349.2121 PULL-TAB TAX; COLLECTION.

[For text of subd 1, see M.S.1988]

Subd. 2. Records. A distributor shall keep at each licensed place of business complete and accurate records for that place of business, including itemized invoices of pull-tabs and tipboards held, purchased, manufactured, or brought in or caused to be brought in from without this state, and of all sales of pull-tabs and tipboards. The records must show the names and addresses of purchasers, the inventory at the close of each period for which a return is required of all pull-tab and tipboard deals on hand, and other pertinent papers and documents relating to the purchase, sale, or disposition of pull-tab and tipboard deals. Books, records, and other papers and documents required by this section must be kept for a period of at least 3-1/2 years after the date of the documents, or the date of the entries appearing in the records, unless the commissioner of revenue authorizes in writing their destruction or disposal at an earlier date. At any time during usual business hours, the commissioner of revenue, director of gambling enforcement, or any of their duly authorized agents or employees, may enter a place of business of a distributor or organization, any site from which pull-tabs or tipboards or other gambling equipment are being sold, or any site at which lawful gambling is being conducted, and inspect the premises and the records required to be kept under this section to determine whether or not all the provisions of this section are being fully complied with. If the commissioner of revenue, director of gambling enforcement, or their duly authorized agents or employees are denied free access to or are hindered or interfered with in making an inspection of the distributor's place of business, the permit of the distributor may be revoked by the commissioner, and the license of the distributor may be revoked by the gambling control board.

[For text of subd 2a, see M.S.1988]

Subd. 3. Suspension, revocation. (a) The commissioner of revenue, after giving notice, may for reasonable cause revoke or suspend a permit held by a distributor. A

notice must be sent to the distributor at least 15 days before the proposed suspension or revocation is to take effect. The notice must give the reason for the proposed suspension or revocation and must require the distributor to show cause why the proposed action should not be taken. The notice may be served personally or by mail.

(b) The notice must inform the distributor of the right to a contested case hearing. If a request in writing is made to the commissioner of revenue within 14 days of the date of the notice, the commissioner shall defer action on the suspension or revocation and shall refer the case to the office of administrative hearings for the scheduling of a contested case hearing. The distributor must be served with 20 days' notice in writing specifying the time and place of the hearing and the allegations against the distributor.

(c) The commissioner of revenue shall issue a final order following receipt of the recommendation of the administrative law judge.

(d) Under section 271.06, subdivision 1, an appeal to the tax court may be taken from the commissioner's order of revocation or suspension. The commissioner of revenue may not issue a new permit after revocation except upon application accompanied by reasonable evidence of the intention of the applicant to comply with all applicable laws and rules.

[For text of subds 4 to 9, see M.S.1988]

Subd. 10. Untaxed gambling equipment. It is a gross misdemeanor for any person to possess gambling equipment for resale in this state that has not been registered with the board, for which a registration stamp has not been affixed to the flare, and upon which the taxes imposed by section 349.212, subdivision 4, or chapter 297A have not been paid. The director of gambling enforcement or the commissioner of revenue or their designated inspectors and employees may seize in the name of the state of Minnesota any unregistered or untaxed gambling equipment.

History: 1989 c 334 art 2 s 36-38

349.2122 MANUFACTURERS; REPORTS TO THE COMMISSIONER OF REVENUE; PENALTY.

A manufacturer licensed with the board who sells pull-tabs and tipboards to a distributor licensed by the board must file with the commissioner of revenue, on a form prescribed by the commissioner, a report of pull-tabs and tipboards sold to licensed distributors. The report must be filed monthly on or before the 25th day of the month succeeding the month in which the sale was made. The commissioner of revenue may inspect the books, records, and inventory of a licensed manufacturer without notice during the normal business hours of the manufacturer. Any person violating this section shall be guilty of a misdemeanor.

History: 1989 c 334 art 2 s 39

349.2125 CONTRABAND.

Subdivision 1. Contraband defined. The following are contraband:

(1) all pull-tab or tipboard deals that do not have stamps affixed to them as provided in section 349.162;

(2) all pull-tab or tipboard deals in the possession of any unlicensed person, firm, or organization, whether stamped or unstamped;

(3) any container used for the storage and display of any contraband pull-tab or tipboard deals as defined in clauses (1) and (2);

(4) all currency, checks, and other things of value used for pull-tab or tipboard transactions not expressly permitted under this chapter, and any cash drawer, cash register, or any other container used for illegal pull-tab or tipboard transactions including its contents;

(5) any device including, but not limited to, motor vehicles, trailers, snowmobiles, airplanes, and boats used, with the knowledge of the owner or of a person operating

with the consent of the owner, for the storage or transportation of more than five pull-tab or tipboard deals that are contraband under this subdivision. When pull-tabs and tipboards are being transported in the course of interstate commerce, or from one distributor to another, the pull-tab and tipboard deals are not contraband, notwithstanding the provisions of clause (1);

(6) any unaffixed registration stamps except as provided in section 349.162, subdivision 4;

(7) any prize used or offered in a game utilizing contraband as defined in this subdivision;

(8) any altered, modified, or counterfeit pull-tab or tipboard ticket;

(9) any unregistered gambling equipment except as permitted by this chapter; and

(10) any gambling equipment kept in violation of section 349.18.

Subd. 2. Seizure. Property made contraband by subdivision 1 may be seized by the commissioner of revenue or the director of gambling enforcement or their authorized agents or by any sheriff or other police officer, hereinafter referred to as the seizing authority, with or without process, and shall be subject to forfeiture as provided in subdivisions 3 and 4.

Subd. 3. Inventory; judicial determination; appeal; disposition of seized property. Within two days after the seizure of any alleged contraband, the person making the seizure shall deliver an inventory of the property seized to the person from whom the property was seized, if known, and file a copy with the commissioner of revenue or the director of gambling enforcement. Within ten days after the date of service of the inventory, the person from whom the property was seized or any person claiming an interest in the property may file with the seizing authority a demand for judicial determination of whether the property was lawfully subject to seizure and forfeiture. Within 30 days after the date of filing of the demand, the seizing authority must bring an action in the district court of the county where seizure was made to determine the issue of forfeiture. The action must be brought in the name of the state and be prosecuted by the county attorney or by the attorney general. The court shall hear the action without a jury and determine the issues of fact and laws involved. When a judgment of forfeiture is entered, the seizing authority may, unless the judgment is stayed pending an appeal, either (1) cause the forfeited property to be destroyed; or (2) cause it to be sold at a public auction as provided by law.

If demand for judicial determination is made and no action is commenced as provided in this subdivision, the property must be released by the seizing authority and delivered to the person entitled to it. If no demand is made, the property seized is considered forfeited to the state by operation of law and may be disposed of by the seizing authority as provided where there has been a judgment of forfeiture. When the seizing authority is satisfied that a person from whom property is seized was acting in good faith and without intent to evade the tax imposed by section 349.2121, subdivision 4, the seizing authority shall release the property seized without further legal proceedings.

[For text of subd 4, see M.S.1988]

History: 1989 c 334 art 2 s 40-42

349.2127 PROHIBITIONS.

[For text of subd 1, see M.S.1988]

Subd. 2. Prohibition against possession. (a) No person, other than a licensed distributor, shall sell, offer for sale, or have in possession with intent to sell or offer for sale, a pull-tab or tipboard deal not stamped in accordance with the provisions of this chapter.

(b) No person other than a licensed distributor or licensed or exempt organization under section 349.214 may possess with the intent to sell or offer to sell gambling

equipment, except (1) equipment exempt from taxation, or (2) equipment put into play by a licensed or exempt organization.

(c) No person, firm, or organization may possess altered, modified, or counterfeit pull-tabs or tipboard tickets with intent to sell, redeem, or exchange them.

[For text of subds 3 and 4, see M.S.1988]

History: 1989 c 334 art 2 s 43

349.213 LOCAL AUTHORITY.

Subdivision 1. Local regulation. A statutory or home rule city or county has the authority to adopt more stringent regulation of any form of lawful gambling within its jurisdiction, including the prohibition of any form of lawful gambling, and may require a permit for the conduct of gambling exempt from licensing under section 349.214. The fee for a permit issued under this subdivision may not exceed \$100. The authority granted by this subdivision does not include the authority to require a license or permit to conduct gambling by organizations or sales by distributors licensed by the board. The authority granted by this subdivision does not include the authority to require an organization to make specific expenditures of more than ten percent from its net profits derived from lawful gambling. For the purposes of this subdivision, net profits are profits less amounts expended for allowable expenses. A statutory or home rule charter city or a county may not require an organization conducting lawful gambling within its jurisdiction to make an expenditure to the city or county as a condition to operate within that city or county, except as authorized under section 349.16, subdivision 4, or 349.212; provided, however, that an ordinance requirement that such organizations must contribute ten percent of their net profits derived from lawful gambling to a fund administered and regulated by the responsible local unit of government without cost to such fund, for disbursement by the responsible local unit of government of the receipts for lawful purposes, is not considered an expenditure to the city or county nor a tax under section 349.212, and is valid and lawful.

A statutory or home rule city or county may by ordinance require that a licensed organization conducting lawful gambling within its jurisdiction expend all or a portion of its expenditures for lawful purposes on lawful purposes conducted or located within the city's or county's trade area. Such an ordinance must define the city's or county's trade area and must specify the percentage of lawful purpose expenditures which must be expended within the trade area.

Subd. 2. Local approval. Before issuing or renewing an organization license or bingo hall license, the board must notify the city council of the statutory or home rule city in which the organization's premises or the bingo hall is located or, if the premises or hall is located outside a city, the county board of the county and the town board of the town where the premises or hall is located. The board may require organizations to notify the appropriate local government at the time of application. This required notification is sufficient to constitute the notice required by this subdivision. If the city council or county board adopts a resolution disapproving the license and so informs the board within 60 days of receiving notice of the application, the license may not be issued or renewed.

History: 1989 c 209 art 1 s 35; 1989 c 334 art 2 s 44,45; 1989 c 335 art 1 s 220

349.214 EXEMPTIONS.

[For text of subds 1 and 1a, see M.S.1988]

Subd. 2. Lawful gambling. (a) Raffles may be conducted by an organization as defined in section 349.12, subdivision 12, without complying with sections 349.11 to 349.14 and 349.151 to 349.213 if the value of all raffle prizes awarded by the organization in a calendar year does not exceed \$750.

(b) Lawful gambling may be conducted by an organization as defined in section

349.12, subdivision 12, without complying with sections 349.151 to 349.16; 349.171 to 349.21; and 349.212 if:

(1) the organization conducts lawful gambling on five or fewer days in a calendar year;

(2) the organization does not award more than \$50,000 in prizes for lawful gambling in a calendar year;

(3) the organization pays a fee of \$25 to the board, notifies the board in writing not less than 30 days before each lawful gambling occasion of the date and location of the occasion, or 60 days for an occasion held in the case of a city of the first class, the types of lawful gambling to be conducted, the prizes to be awarded, and receives an exemption identification number;

(4) the organization notifies the local government unit 30 days before the lawful gambling occasion, or 60 days for an occasion held in a city of the first class;

(5) the organization purchases all gambling equipment and supplies from a licensed distributor; and

(6) the organization reports to the board, on a single page form prescribed by the board, within 30 days of each gambling occasion, the gross receipts, prizes, expenses, expenditures of net profits from the occasion, and the identification of the licensed distributor from whom all gambling equipment was purchased.

(c) If the organization fails to file a timely report as required by paragraph (b), clause (3) or (6), a \$250 penalty is imposed on the organization. Failure to file a timely report does not disqualify the organization as exempt under this paragraph if a report is subsequently filed and the penalty paid.

(d) Merchandise prizes must be valued at their fair market value.

(e) Unused pull-tab and tipboard deals must be returned to the distributor within seven working days after the end of the lawful gambling occasion. The distributor must accept and pay a refund for all returns of unopened and undamaged deals returned under this paragraph.

[For text of subds 3 and 4, see M.S.1988]

History: 1989 c 334 art 2 s 46

349.22 PENALTY.

Subdivision 1. **Gross misdemeanor.** A person who in any manner violates sections 349.11 to 349.23 to evade a tax imposed by a provision of this chapter, or who aids and abets evasion of a tax, or hinders or interferes with a seizing authority when a seizure is made as provided by section 349.2125, is guilty of a gross misdemeanor.

[For text of subd 2, see M.S.1988]

Subd. 3. **Felony.** (a) A person violating section 349.2127, subdivision 1 or 3, is guilty of a felony.

(b) A person violating section 349.2127, subdivision 2 or 4, by possessing, receiving, or transporting more than ten pull-tab or tipboard deals, or a combination of more than ten deals of pull-tabs or tipboards, is guilty of a felony.

[For text of subd 4, see M.S.1988]

History: 1989 c 334 art 2 s 47,48

349.501 REQUIRED NOTICE.

Subdivision 1. **To the public.** An operator must prominently post in the owner's business premises a brief description of the legal consequences of awarding cash instead of game credits or replays on video games of chance in violation of section 349.502.

The information is prominently posted if it can be readily seen by a player immediately before the player participates in the video game of chance.

Subd. 2. **To employees.** An owner shall require all employees to sign a statement that they understand the legal consequences of awarding cash instead of game credits or replays on video games of chance located in the owner's business premises. The statement must contain a full and accurate description of those legal consequences.

History: 1989 c 149 s 1

349.502 CASH AWARDS PROHIBITED.

Subdivision 1. **Misdemeanor.** A person who awards or receives cash instead of game credits or replays on a video game of chance is guilty of a misdemeanor. An owner who directs an employee to violate this section is also considered to have violated this section. For purposes of this subdivision "cash" includes checks.

Subd. 2. **Mandatory penalty.** Upon conviction of a person for the crime established in subdivision 1, the court shall impose a fine of \$700.

History: 1989 c 149 s 2

349.51 DISTRIBUTOR AND OPERATOR LICENSES.

[For text of subd 1, see M.S.1988]

Subd. 2. **Application; requirements.** (a) Every application for a license must be made on a form prescribed by the department and must state the name and address of the applicant. If the applicant is a firm, partnership, or association, the application must state the name and address of each of its members. If the applicant is a corporation, the application must state the name and address of each of its officers, the date of incorporation, the address of its principle place of business, the place where the business is to be licensed and business conducted, and information concerning whether or not any officer, director, resident manager, or direct salesperson of the applicant has been convicted of a felony or convicted for a gambling offense within the past five years. The application may contain other information the department requires for licensing purposes.

(b) Every applicant for a license shall be a legal resident or be incorporated within the state of Minnesota prior to the date of application for a distributor or operator license.

(c) Every applicant shall disclose under oath to the commissioner whether or not the applicant has any financial, legal, or other interests in a licensed wholesale liquor or alcoholic beverage distributorship or video game of chance distributorship in another state.

(d) No distributor may also be a wholesale distributor of liquor or alcoholic beverages.

(e) No distributor in this state may also be a distributor in another state, unless the distributor adequately demonstrates that the distributor does not manufacture video games of chance outside of this state for use, sale, or distribution within this state.

(f) An operator who has been convicted of a violation of section 349.502, subdivision 1, is not eligible to obtain or hold a license under this section.

[For text of subds 3 to 5, see M.S.1988]

History: 1989 c 149 s 3

349.53 RECORD-KEEPING DUTIES OF DISTRIBUTORS.

A distributor shall keep at each licensed place of business complete and accurate records for that place of business, including the signed statements required by section 349.501, invoices of video games of chance held, purchased, manufactured, brought in or caused to be brought in from outside the state, or shipped or transported to operators in this state, and of all sales of video games of chance made. The distributor must also keep adequate records of the names, addresses, and license numbers of operators to

whom video games of chance are sold. All books, records, and other papers and documents required by this section to be kept must be preserved for a period of at least one year after the date of the documents, or the date of their entries as they appear in the records, unless the department, in writing, authorizes their destruction or disposal at an earlier date. At any time during usual business hours, the commissioner or designated representatives may enter any place of business of a distributor without a search warrant and inspect the premises and the records required to be kept under this section, to determine whether or not all the provisions of this chapter are being fully complied with. If the commissioner or any representative is denied free access or is hindered or interfered with in making an examination, the license of the distributor at the premises is subject to revocation.

History: 1989 c 149 s 4

349.56 LOCATION AGREEMENTS.

An operator is required to have a location agreement with the owner where the game is placed for use by the public. The location agreement must show that the game is to be placed only in locations permitted by law. The location agreement must also include the notice required by section 349.501. The location agreements, together with the other records of the operator, must be accessible to the commissioner and designated representatives. The operator is required to certify under oath to the department annually the name and address of the location in which each game has been placed and that the games have been placed only in locations permitted by law. Placing a game in an illegal location is grounds for suspension or revocation of the operator's license.

History: 1989 c 149 s 5