

## Gaming

## CHAPTER 349

BINGO, GAMBLING DEVICES, AND VIDEO GAMES  
OF CHANCE

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**349.01** [Repealed, 1976 c 261 s 15]

**349.02** [Repealed, 1976 c 261 s 15]

**349.03** [Repealed, 1976 c 261 s 15]

**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:** 1976 c 261 s 1; 1Sp1981 c 4 art 1 s 162; 1984 c 502 art 12 s 2; 1989 c 334 art 2 s 1

**349.12 DEFINITIONS.**

Subdivision 1. As used in sections 349.11 to 349.22 the following terms have the meanings given them.

Subd. 2. **Active member.** "Active member" means a member who has paid all dues

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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.

Subd. 3. **Affiliate.** "Affiliate" is any person or entity directly or indirectly controlling, controlled by, or under common control or ownership with a licensee of the board or any officer or director of a licensee of the board.

Subd. 4. **"Bingo"** means a game where each player has a card or board for which a consideration has been paid containing five horizontal rows of spaces, with each row except the central one containing five figures. The central row has four figures with the word "free" marked in the center space thereof. Bingo also includes games which are as described in this subdivision except for the use of cards where the figures are not pre-printed but are filled in by the players. A player wins a game of bingo by completing a preannounced combination of spaces or, in the absence of a preannouncement of a combination of spaces, any combination of five spaces in a row, either vertical, horizontal or diagonal.

Subd. 5. **"Bingo occasion"** means a single gathering or session at which a series of one or more successive bingo games is played.

Subd. 6. **Board.** "Board" is the gambling control board.

Subd. 7. **Capital assets.** "Capital assets" means property, real or personal, except gambling equipment, with an expected useful life of at least one year.

Subd. 8. **"Checker"** means a person who records the number of bingo cards purchased and played during each game and records the prizes awarded to the recorded cards, but does not collect the payment for the cards.

Subd. 9. **Deal.** "Deal" means each separate package, or series of packages, consisting of one game of pull-tabs or tipboards with the same serial number.

Subd. 10. **Director.** "Director" is the director of the division of gambling control.

Subd. 11. **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.

Subd. 12. **Division.** "Division" is the division of gambling control in the department of gaming.

Subd. 13. **Face value.** "Face value" means the price per ticket printed on the ticket or the flare.

Subd. 14. **Fiscal year.** "Fiscal year 1990" means the period from October 1, 1989, to June 30, 1990. For all subsequent times, "fiscal year" means the period from July 1 to June 30.

Subd. 15. **501(c)(3) organization.** "501(c)(3) organization" is an organization exempt from the payment of federal income taxes under section 501(c)(3) of the Internal Revenue Code.

Subd. 16. **Flare.** "Flare" is the posted display, with registration stamp affixed, that sets forth the rules of a particular game of pull-tabs or tipboards and that is associated with a specific deal of pull-tabs or grouping of tipboards.

Subd. 17. **Free play.** "Free play" means a winning ticket that is labeled as a free play or its equivalent.

Subd. 18. **Gambling equipment.** "Gambling equipment" means: bingo cards or sheets, devices for selecting bingo numbers, pull-tabs, jar tickets, paddlewheels, and tipboards.

Subd. 19. **"Gambling manager"** means a person who has paid all dues to an organization and has been a member of the organization for at least two years and has been designated by the organization to supervise lawful gambling conducted by it.

Subd. 20. **Gross profit.** "Gross profit" means the gross receipts collected from lawful gambling, less reasonable sums necessarily and actually expended for prizes.

Subd. 21. **Gross receipts.** "Gross receipts" means all receipts derived from lawful gambling activity including, but not limited to, the following items:

- (1) gross sales of bingo cards and sheets before reduction for prizes, expenses, shortages, free plays, or any other charges or offsets;
- (2) the ideal gross of pull-tab and tipboard deals or games less the value of unsold and defective tickets and before reduction for prizes, expenses, shortages, free plays, or any other charges or offsets;
- (3) gross sales of raffle tickets and paddle tickets before reduction for prizes, expenses, shortages, free plays, or any other charges or offsets;
- (4) admission, commission, cover, or other charges imposed on participants in lawful gambling activity as a condition for or cost of participation; and
- (5) interest, dividends, annuities, profit from transactions, or other income derived from the accumulation or use of gambling proceeds.

Gross receipts does not include proceeds from rental under section 349.164 or 349.18, subdivision 3, for duly licensed bingo hall lessors.

Subd. 22. **Ideal gross.** "Ideal gross" means the total amount of receipts that would be received if every individual ticket in the pull-tab or tipboard deal was sold at its face value. In the calculation of ideal gross and prizes, a free play ticket shall be valued at face value.

Subd. 23. **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. 24. "Lawful gambling" is the operation, conduct or sale of bingo, raffles, paddlewheels, tipboards, and pull-tabs.

Subd. 25. (a) "Lawful purpose" means one or more of the following:

- (1) any expenditure by or contribution to a 501(c)(3) organization, provided that the organization and expenditure or contribution are in conformity with standards prescribed by the board under section 349.154;
- (2) a contribution to an individual or family suffering from poverty, homelessness, or physical or mental disability, which is used to relieve the effects of that poverty, homelessness, or disability;
- (3) a contribution to an individual for treatment for delayed posttraumatic stress syndrome or a contribution to a recognized program for the treatment of compulsive gambling on behalf of an individual who is a compulsive gambler;
- (4) a contribution to or expenditure on a public or private nonprofit educational institution registered with or accredited by this state or any other state;
- (5) a contribution to a scholarship fund for defraying the cost of education to individuals where the funds are awarded through an open and fair selection process;
- (6) activities by an organization or a government entity which recognize humanitarian or military service to the United States, the state of Minnesota, or a community, subject to rules of the board;
- (7) recreational, community, and athletic facilities and activities intended primarily for persons under age 21, provided that such facilities and activities do not discriminate on the basis of gender, as evidenced by (i) provision of equipment and supplies, (ii) scheduling of activities, including games and practice times, (iii) supply and assignment of coaches or other adult supervisors, (iv) provision and availability of support facilities, and (v) whether the opportunity to participate reflects each gender's demonstrated interest in the activity, provided that nothing in this clause prohibits a contribution to or expenditure on an educational institution or other entity that is excepted from the prohibition against discrimination based on sex contained in the Higher Education Act Amendments of 1976, United States Code, title 20, section 1681;
- (8) payment of local taxes authorized under this chapter, taxes imposed by the United States on receipts from lawful gambling, the tax imposed by section 349.212,

subdivisions 1 and 4, and the tax imposed on unrelated business income by section 290.05, subdivision 3;

(9) payment of real estate taxes and assessments on licensed gambling premises wholly owned by the licensed organization paying the taxes, not to exceed the amount which an organization may expend under board rule on rent for premises used for lawful gambling;

(10) a contribution to the United States, this state or any of its political subdivisions, or any agency or instrumentality thereof other than a direct contribution to a law enforcement or prosecutorial agency; or

(11) a contribution to or expenditure by a nonprofit organization, church, or body of communicants gathered in common membership for mutual support and edification in piety, worship, or religious observances.

(b) Notwithstanding paragraph (a), "lawful purpose" does not include:

(1) any expenditure made or incurred for the purpose of influencing the nomination or election of a candidate for public office or for the purpose of promoting or defeating a ballot question;

(2) any activity intended to influence an election or a governmental decision-making process;

(3) the erection, acquisition, improvement, expansion, repair, or maintenance of real property or capital assets owned or leased by an organization, except as provided in clause (6), unless the board has first specifically authorized the expenditures after finding that (i) the real property or capital assets will be used exclusively for one or more of the purposes in paragraph (a); (ii) 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; (iii) with respect to expenditures, including a mortgage payment or other debt service payment, 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; or (iv) with respect to expenditures, including a mortgage payment or other debt service payment, for erection or acquisition only, that the erection or acquisition is necessary to replace with a comparable building a building owned by the organization that was acquired from the organization by eminent domain or sold by the organization to a purchaser that the organization reasonably believed would otherwise have acquired the building by eminent domain, provided that the expenditure may be only for that part of the replacement cost that exceeds the compensation received by the organization for the building being replaced;

(4) an expenditure by an organization which is a contribution to a parent organization, foundation, or affiliate of the contributing organization, if the parent organization, foundation, or affiliate has provided to the contributing organization within one year of the contribution any money, grants, property, or other thing of value;

(5) a contribution by a licensed organization to another licensed organization unless the board has specifically authorized the contribution. The board must authorize such a contribution when requested to do so by the contributing organization unless it makes an affirmative finding that the contribution will not be used by the recipient organization for one or more of the purposes in paragraph (a); or

(6) the erection, acquisition, improvement, or expansion of real property or capital assets which will be used for one or more of the purposes in paragraph (a), clause (7), unless the organization making the expenditures notifies the board at least 15 days before making the expenditure.

**Subd. 26. 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. 27. **Net profit.** "Net profit" means gross profit less reasonable sums actually expended for allowable expenses.

Subd. 28. **Organization.** "Organization" means any fraternal, religious, veterans, or other nonprofit organization.

Subd. 29. **"Paddlewheel"** means a wheel marked off into sections containing one or more numbers, and which, after being turned or spun, uses a pointer or marker to indicate winning chances.

Subd. 30. **Person.** "Person" is an individual, firm, association, partnership, corporation, trustee, or legal representative.

Subd. 31. **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. 32. **"Pull-tab"** means a single folded or banded ticket or a card with a face covered to conceal one or more numbers or symbols, where one or more of each set of tickets or cards has been designated in advance as a winner. "Pull-tab" also includes a ticket sold in a gambling device known as a ticket jar.

Subd. 33. **"Raffle"** means a game in which a participant buys a ticket for a chance at a prize with the winner determined by a random drawing to take place at a location and date printed upon the ticket.

Subd. 34. **"Tipboard"** means a board, placard or other device marked off in a grid or columns, in which each section contains a hidden number or numbers, or other symbol, which determines the winning chances.

**History:** 1976 c 261 s 2; 1984 c 502 art 12 s 3; 1986 c 444; 1986 c 467 s 4-6; 1987 c 327 s 2-5; 1988 c 596 s 1; 1988 c 719 art 9 s 1-3; 1989 c 203 s 1; 1989 c 334 art 2 s 2-15, 51; 1Sp1989 c 1 art 13 s 1-6; 1990 c 590 art 1 s 4-9

### 349.13 LAWFUL GAMBLING.

Lawful gambling is not a lottery or gambling within the meaning of sections 609.75 to 609.76 if it is conducted under this chapter.

**History:** 1976 c 261 s 3; 1984 c 502 art 12 s 4

### 349.14 [Repealed, 1990 c 590 art 1 s 55]

### 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 60 percent of the gross profit less the tax imposed under section 349.212, subdivision 1, from bingo, and no more than 50 percent of the gross profit less the tax imposed by section 349.212, subdivision 6, from 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:** 1976 c 261 s 5; 1984 c 502 art 12 s 6; 1986 c 467 s 7; 1Sp1986 c 3 art 2 s 16; 1987 c 327 s 7; 1989 c 203 s 2; 1989 c 334 art 2 s 16; 1Sp1989 c 1 art 13 s 7; 1990 c 590 art 1 s 10

### 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. 3a. **Compensation.** The compensation of board members is as provided in section 15.0575, subdivision 3.

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

- (1) to regulate lawful gambling to ensure it is conducted in the public interest;
- (2) to issue licenses to organizations, distributors, bingo halls, manufacturers, and gambling managers;
- (3) to collect and deposit license, permit, and registration fees due under this chapter;
- (4) to receive reports required by this chapter and inspect all premises, records, books, and other documents of organizations, distributors, manufacturers, and bingo halls to insure compliance with all applicable laws and rules;
- (5) to make rules authorized by this chapter;
- (6) to register gambling equipment and issue registration stamps;
- (7) 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;
- (8) to report annually to the governor and legislature on its activities and on recommended changes in the laws governing gambling;
- (9) to impose civil penalties of not more than \$500 per violation on organizations, distributors, manufacturers, bingo halls, and gambling managers for failure to comply with any provision of this chapter or any rule of the board;
- (10) to issue premises permits to organizations licensed to conduct lawful gambling;
- (11) to delegate to the director the authority to issue licenses and premises permits under criteria established by the board;
- (12) to suspend or revoke licenses and premises permits of organizations, distributors, manufacturers, bingo halls, or gambling managers as provided in this chapter;
- (13) to register recipients of net profits from lawful gambling and to revoke or suspend the registrations;
- (14) to register employees of organizations licensed to conduct lawful gambling;
- (15) to require fingerprints from persons determined by board rule to be subject to fingerprinting; and
- (16) to take all necessary steps to ensure the integrity of and public confidence in lawful gambling.

(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. [Repealed, 1990 c 590 art 1 s 55]

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 subd 5]

**History:** 1984 c 502 art 12 s 7; 1984 c 640 s 32; 1986 c 444; 1986 c 467 s 8,9; 1987 c 327 s 8,9; 1989 c 334 art 2 s 17; 1990 c 590 art 1 s 11,12

**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 and premises permits 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.

Subd. 3. **Cease and desist orders.** 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. 4. **Executive assistant.** The director may appoint an executive assistant to the director, who is in the unclassified service.

**History:** 1989 c 334 art 2 s 18; 1990 c 590 art 1 s 13-15

**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*

**349.154 EXPENDITURE OF NET PROFITS FROM LAWFUL GAMBLING.**

Subdivision 1. **Standards for certain organizations.** The board shall by rule prescribe standards that must be met by any licensed organization that is a 501(c)(3) organization. The standards must provide:

(1) operating standards for the organization, including a maximum percentage or percentages of the organization's total expenditures that may be expended for the organization's administration and operation; and

(2) standards for any expenditure by the organization of net profits from lawful gambling, including a requirement that the expenditure be related to the primary purpose of the organization.

Subd. 2. **Net profit reports.** (a) Each licensed organization must report monthly to the board on a form prescribed by the board each expenditure and contribution of net profits from lawful gambling. The reports must provide for each expenditure or contribution:

(1) the name, address, and telephone number of the recipient of the expenditure or contribution;

(2) the date the contribution was approved by the organization;

(3) the date, amount, and check number of the expenditure or contribution; and

(4) a brief description of how the expenditure or contribution meets one or more of the purposes in section 349.12, subdivision 25, paragraph (a).

(b) Each report required under paragraph (a) must be accompanied by an acknowledgment, on a form the board prescribes, of each contribution of net profits from lawful gambling included in the report. The acknowledgment must be signed by the recipient of the contribution, or, if the recipient is not an individual, or other authorized representative of the recipient, by an officer. The acknowledgment must include the name and address of the contributing organization and each item in paragraph (a), clauses (1) to (3).

(c) The board shall provide the commissioners of revenue and public safety copies of each report received under this subdivision.

Subd. 3. **Registration of lawful gambling net profit recipients.** The board may by rule require that any individual, organization, or other entity must be registered with the board to receive a contribution of net profits from lawful gambling. The rules may designate and define specific categories of recipients that are subject to registration. The board may suspend or revoke the registration of any recipient the board determines has made an unlawful expenditure of net profits from lawful gambling.

*History: 1989 c 334 art 2 s 51; 1990 c 590 art 1 s 16*

**349.16 ORGANIZATION LICENSES.**

Subdivision 1. **License required.** An organization may conduct lawful gambling if it has a license to conduct lawful gambling and complies with this chapter.

Subd. 1a. [Repealed by amendment, 1990 c 590 art 1 s 17]

Subd. 2. **Issuance of gambling licenses.** (a) Licenses authorizing organizations to conduct lawful gambling may be issued by the board to organizations meeting the qualifications in paragraphs (b) to (h) if the board determines that the license is consistent with the purpose of sections 349.11 to 349.22.



(b) The organization must have been in existence for the most recent three years preceding the license application as a registered Minnesota nonprofit corporation or as an organization designated as exempt from the payment of income taxes by the Internal Revenue Code.

(c) The organization at the time of licensing must have at least 15 active members.

(d) The organization must not be in existence solely for the purpose of conducting gambling.

(e) The organization must not have as an officer or member of the governing body any person who, within the five years before the issuance of the license, has been convicted in a federal or state court of a felony or gross misdemeanor or who has ever been convicted of a crime involving gambling or who has had a license issued by the board or director revoked for a violation of law or board rule.

(f) The organization has identified in its license application the lawful purposes on which it proposes to expend net profits from lawful gambling.

(g) The organization has identified on its license application a gambling manager and certifies that the manager is qualified under this chapter.

(h) The organization must not, in the opinion of the board after consultation with the commissioner of revenue, be seeking licensing primarily for the purpose of evading or reducing the tax imposed by section 349.212, subdivision 6.

**Subd. 3. Term of license: suspension and revocation.** Licenses issued under this section are valid for one year and may be suspended by the board for a violation of law or board rule or revoked for what the board determines to be a willful violation 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. 4. Application.** All applications for a license under this section must be on a form prescribed by the board. The board may require the applying organization to submit a copy of its articles of incorporation and other documents it deems necessary.

**Subd. 5. Renewals.** The board shall not renew a license issued under this section unless it determines that the organization is in compliance with all laws and rules governing lawful gambling and is not delinquent in filing tax returns or paying taxes required under this chapter. The board may delegate to the director the authority to make determinations required under this subdivision.

**Subd. 6. Fees.** The board may issue four classes of organization 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 board shall not charge a fee for an organization license.

**Subd. 7. Purchase of gambling equipment.** An organization may purchase gambling equipment only from a person licensed as a distributor.

**Subd. 8. 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:** 1976 c 261 s 6; 1984 c 502 art 12 s 8; 1986 c 467 s 10,11; 1989 c 334 art 2 s 20,21; 1Sp1989 c 1 art 13 s 8; 1990 c 590 art 1 s 17

### 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 or excluded from licensing, except to an organization licensed for lawful gambling;

(2) sell, offer for sale, or furnish gambling equipment for lawful gambling without having obtained a distributor license under this section;

(3) sell, offer for sale, or furnish gambling equipment for use within the state that is not purchased or obtained from a manufacturer or distributor licensed under this chapter; or

(4) sell, offer for sale, or furnish gambling equipment for use within the state that has the same serial number as another item of gambling equipment of the same type sold or offered for sale or furnished for use in the state by that distributor.

**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 ever been convicted of a felony;

(2) has ever been convicted of a crime involving gambling;

(3) has ever been convicted of (i) assault, (ii) a criminal violation involving the use of a firearm, or (iii) making terroristic threats;

(4) is or has ever been engaged in an illegal business;

(5) owes \$500 or more in delinquent taxes as defined in section 270.72;

(6) has had a sales and use tax permit revoked by the commissioner of revenue within the last two years; or

(7) 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, or any representative, agent, affiliate, or employee of a distributor, may be (1) involved in the conduct of lawful gambling by an organization; (2) keep or assist in the keeping of an organization's financial records, accounts, and inventories; or (3) prepare or assist in the preparation of tax forms and other reporting forms required to be submitted to the state by an organization.

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

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

(f) No distributor or any representative, agent, affiliate, or employee of a distributor may: (1) recruit a person to become a gambling manager of an organization or identify to an organization a person as a candidate to become gambling manager for the organization; or (2) identify for an organization a potential gambling location.

(g) No distributor may purchase gambling equipment from any person not licensed as a manufacturer under section 349.163.

(h) No distributor may sell gambling equipment to any person in Minnesota other than (i) a licensed organization or organization exempt from licensing, or (ii) the governing body of an Indian tribe.

**Subd. 6. Revocation and suspension.** A license under this section may be suspended by the board for a violation of law or board rule. A license under this section may be revoked for failure to meet the qualifications in subdivision 3 at any time or for a willful violation 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 and employee of a distributor must have in their possession a picture identification card approved by the board. No person other than an employee of a licensed distributor shall make any sales on behalf of a licensed distributor.

**History:** 1984 c 502 art 12 s 9; 1986 c 467 s 12,13; 1987 c 327 s 10-12; 1989 c 334 art 2 s 22; 1Sp1989 c 1 art 13 s 9; 1990 c 590 art 1 s 18

### 349.162 EQUIPMENT REGISTERED.

**Subdivision 1. Stamp required.** (a) 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.

(b) From January 1, 1991, to June 30, 1992, no distributor, organization, or other person may sell a pull-tab which is not clearly marked "For Sale in Minnesota Only."

(c) On and after July 1, 1992, no distributor, organization, or other person may sell a pull-tab which is not clearly marked "Manufactured in Minnesota For Sale in Minnesota Only."

(d) Paragraphs (b) and (c) do not apply to pull-tabs sold by a distributor to the governing body of an Indian tribe.

**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 distributor purchased the equipment;
- (2) the registration number of the equipment;
- (3) the name, address, and license or exempt permit number 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;
- (6) the name of the person who received the equipment;
- (7) the type of equipment;
- (8) the serial number of the equipment;
- (9) the name, form number, or other identifying information for each game; and
- (10) in the case of bingo cards sold on and after January 1, 1991, the individual number of each card.

The invoice for each sale must be retained for at least 3-1/2 years after the sale is

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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 business premises, books, records, and other documents of a distributor at any reasonable time without notice and without a search warrant.

The board may require that a distributor submit the monthly report and invoices required in this subdivision via magnetic media or electronic data transfer.

**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.

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

(c) On and after January 1, 1991, no distributor may:

(1) sell a bingo card that does not bear an individual number; or

(2) sell a package of bingo cards that does not contain bingo cards in numerical order.

**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. This paragraph does not apply to unregistered gambling equipment being transported in interstate commerce between locations outside this state, if the interstate shipment is verified by a bill of lading or other valid shipping document.

**Subd. 6. Removal of equipment from inventory.** Authorized employees of the board, the division of gambling enforcement of the department of public safety, and the commissioner of revenue may remove gambling equipment from the inventories of distributors and organizations and test that equipment to determine its compliance with all applicable laws and rules. A distributor or organization may return to the manufacturer thereof any gambling equipment which is determined to be in violation of law or rule. The cost to an organization of gambling equipment removed from inventory under this paragraph and found to be in compliance with all applicable law and rules is an allowable expense under section 349.15.

**History:** 1984 c 502 art 12 s 10; 1986 c 467 s 14; 1987 c 327 s 13,14; 1989 c 334 art 2 s 23; 1990 c 590 art 1 s 19

**349.163 LICENSING OF MANUFACTURERS.**

**Subdivision 1. License required.** No manufacturer of gambling equipment may sell any gambling equipment to any person unless the manufacturer has a current and valid license by the board under this section and other criteria prescribed by the board by rule.

A manufacturer licensed under this section may not also be directly or indirectly licensed as a distributor under section 349.161 unless the manufacturer (1) does not manufacture any gambling equipment other than paddlewheels, and (2) was licensed as both a manufacturer and distributor on May 1, 1990.

**Subd. 1a. Qualifications.** A license may not be issued under this section to a person, or to a corporation, firm, or partnership that 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 ever been convicted of a felony;
- (2) has ever been convicted of a crime involving gambling;
- (3) has ever been convicted of (i) assault, (ii) a criminal violation involving the use of a firearm, or (iii) making terroristic threats;
- (4) is or has ever been engaged in an illegal business;
- (5) owes \$500 or more in delinquent taxes as defined in section 270.72;
- (6) has had a sales and use tax permit revoked by the commissioner of revenue within the last two years; or
- (7) after demand, has not filed tax returns required by the commissioner of revenue.

**Subd. 1b. Applications; information.** An applicant for a manufacturer's license must list on the license application the names and addresses of all subsidiaries, affiliates, and branches in which the applicant has any form of ownership or control, in whole or in part, without regard to whether the subsidiary, affiliate, or branch does business in Minnesota.

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

**Subd. 2a. Licenses; suspension, revocation.** The board may suspend a license under this section for a violation of law or board rule. The board may revoke a license under this section for (1) a willful violation of law or board rule, or (2) a conviction in another jurisdiction for a criminal violation that is related to gambling, or that would be a felony or gross misdemeanor if committed in Minnesota.

**Subd. 3. Prohibited sales.** (a) A manufacturer may not:

- (1) sell gambling equipment to any person not licensed as a distributor unless the manufacturer is also a licensed distributor;
- (2) sell gambling equipment to a distributor in this state that has the same serial number as another item of gambling equipment of the same type that is sold by that manufacturer for use in this state;
- (3) from January 1, 1991, to June 30, 1992, sell to any person in Minnesota, other than the governing body of an Indian tribe, a pull-tab on which the manufacturer has not clearly printed the words "For Sale in Minnesota Only";
- (4) on and after July 1, 1992, sell to any person in Minnesota, other than the governing body of an Indian tribe, a pull-tab on which the manufacturer has not clearly printed the words "Manufactured in Minnesota For Sale In Minnesota Only"; or
- (5) sell a pull-tab marked as required in clauses (3) and (4) to any person inside or outside the state, including the governing body of an Indian tribe, who is not a licensed distributor.

(b) On and after July 1, 1992, all pull-tabs sold by a licensed manufacturer to a person in Minnesota must be manufactured in Minnesota.

(c) A manufacturer, affiliate of a manufacturer, or person acting as a representative

or agent of a manufacturer may not provide a lessor of gambling premises or an appointed official any compensation, gift, gratuity, premium, contribution, or other thing of value.

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

Subd. 5. **Pull-tab and tipboard flares.** (a) A manufacturer may not ship or cause to be shipped into this state any deal of pull-tabs or tipboards that does not have its own individual flare as required for that deal by rule of the board. A person other than a manufacturer may not manufacture, alter, modify, or otherwise change a flare for a deal of pull-tabs or tipboards except as allowed by this chapter or board rules.

(b) The flare of each deal of pull-tabs and tipboards sold by a manufacturer in Minnesota must have the Minnesota gambling stamp affixed. The flare, with the stamp affixed, must be placed inside the wrapping of the deal which the flare describes.

(c) Each pull-tab and tipboard flare must bear the following statement printed in letters large enough to be clearly legible:

“Pull-tab (or tipboard) purchasers — This pull-tab (or tipboard) game is not legal in Minnesota unless:

— a Minnesota gambling stamp is affixed to this sheet, and

— the serial number handwritten on the gambling stamp is the same as the serial number printed on this sheet and on the pull-tab (or tipboard) ticket you have purchased.”

(d) The flare of each pull-tab and tipboard game must bear the serial number of the game, printed in numbers at least one-half inch high.

(e) The flare of each pull-tab and tipboard game must be imprinted at the bottom with a bar code that provides:

- (1) the name of the game;
- (2) the serial number of the game;
- (3) the name of the manufacturer;
- (4) the number of tickets in the deal;
- (5) the odds of winning each prize in the deal; and
- (6) other information the board by rule requires.

The serial number included in the bar code must be the same as the serial number of the tickets included in the deal. A manufacturer who manufactures a deal of pull-tabs must affix to the outside of the box containing that game the same bar code that is imprinted at the bottom of a flare for that deal.

(f) No person may alter the bar code that appears on the outside of a box containing a deal of pull-tabs and tipboards. Possession of a box containing a deal of pull-tabs and tipboards that has a bar code different from the bar code of the deal inside the box is prima facie evidence that the possessor has altered the bar code on the box.

Subd. 6. **Samples of gambling equipment.** The board shall require each licensed manufacturer to submit to the board one or more samples of each item of gambling equipment the manufacturer manufactures for sale in this state. The board shall inspect and test all the equipment it deems necessary to determine the equipment's compliance with law and board rules. Samples required under this subdivision must be approved by the board before the equipment being sampled is sold in this state. The board may request the assistance of the commissioner of public safety and the director of the state lottery division in performing the tests.

Subd. 7. **Recycled paper.** The board may, after January 1, 1991, by rule require that all pull-tabs sold in Minnesota be manufactured using recycled paper.

**History:** 1986 c 467 s 15; 1989 c 334 art 2 s 24; 1Sp1989 c 1 art 13 s 10; 1990 c 590 art 1 s 20

**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 a current and valid bingo hall license under this section.

**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, organization, corporation, firm, or partnership that is not the legal owner of the facility, or to a person, organization, corporation, firm, or partnership which has as an officer, director, or other person in a supervisory or management position a person, who:

- (1) has ever been convicted of a felony;
- (2) has ever been convicted of a crime involving gambling;
- (3) has ever been convicted of (i) assault, (ii) a criminal violation involving the use of a firearm, or (iii) making terroristic threats;
- (4) owes delinquent taxes in excess of \$500 as defined in section 270.72; or
- (5) after demand, has not filed tax returns required by the commissioner of revenue.

**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. Prohibited acts.** No bingo hall licensee, person holding a financial or managerial interest in a bingo hall, or affiliate thereof may:

- (1) 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;
- (2) provide any staff to conduct or assist in the conduct of bingo or any other form of lawful gambling on the premises;
- (3) acquire, provide storage or inventory control, or report the use of any gambling equipment used by an organization that conducts lawful gambling on the premises;
- (4) provide accounting services to an organization conducting lawful gambling on the premises;
- (5) solicit, suggest, encourage, or make any expenditures of gross receipts of an organization from lawful gambling;
- (6) charge any fee to a person without which the person could not play a bingo game or participate in another form of lawful gambling on the premises;
- (7) provide assistance or participate in the conduct of lawful gambling on the premises; or
- (8) permit more than 21 bingo occasions to be conducted on the premises in any week.

**Subd. 7. [Renumbered part of subdivision 6]**

**Subd. 7. 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 bingo hall licensee based on the number of participants attending the bingo occasion or participating in lawful gambling on the premises, or based on the gross receipts or profit received by the organization. All provisions of section 349.18 apply to lawful gambling conducted in bingo halls.

**Subd. 8. [Renumbered subd 7]**

**Subd. 8. Revocation and suspension.** A license under this section may be suspended by the board for a violation of law or board rule or revoked for (1) failure to meet the qualifications in subdivision 3 at any time; or (2) a willful violation 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. 9.** [Renumbered subd 8]

**History:** 1988 c 596 s 2; 1989 c 334 art 2 s 25; 1990 c 590 art 1 s 21

### **349.1641 LICENSES; SUMMARY SUSPENSION.**

The board may (1) summarily suspend the license of an organization that is more than three months late in filing a tax return required under this chapter and may keep the suspension in effect until all required returns are filed; and (2) summarily suspend for not more than 90 days any license issued by the board or director for what the board determines are actions detrimental to the integrity of lawful gambling in Minnesota. The board must notify the licensee at least 14 days before suspending the license under this paragraph. A contested case hearing must be held within 20 days of the summary suspension and the administrative law judge's report must be issued within 20 days after the close of the hearing record. In all cases involving summary suspension, the board must issue its final decision within 30 days after receipt of the report of the administrative law judge and subsequent exceptions and argument under section 14.61. When an organization's license is suspended or revoked under this subdivision, the board shall within three days notify all municipalities in which the organization's gambling premises are located and all licensed distributors in the state.

**History:** 1990 c 590 art 1 s 22

### **349.165 PREMISES PERMITS.**

**Subdivision 1. Premises permit required; application.** A licensed organization may not conduct lawful gambling at any site unless it has first obtained from the board a premises permit for the site. The board shall prescribe a form for permit applications, and each application for a permit must be submitted on a separate form. The board may by rule limit the number of premises permits that may be issued to an organization.

**Subd. 2. Contents of application.** An application for a premises permit must contain:

- (1) the name and address of the applying organization and of the organization's gambling manager;
- (2) a description of the site for which the permit is sought, including its address and, where applicable, its placement within another premises or establishment;
- (3) if the site is leased, the name and address of the lessor and information about the lease the board requires, including all rents and other charges for the use of the site; and
- (4) other information the board deems necessary to carry out its purposes.

An organization holding a premises permit must notify the board in writing within ten days whenever any material change is made in the above information.

**Subd. 3. Fees.** The board may issue four classes of premises permits corresponding to the classes of licenses authorized under section 349.16, subdivision 6. The annual fee for each class of permit is:

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

**Subd. 4. Identification of premises.** No organization may seek or accept assistance from a manufacturer or distributor, or a representative, agent, affiliate, or employee of a manufacturer or distributor, in identifying potential locations for gambling conducted by the organization.

**History:** 1990 c 590 art 1 s 23



**349.166 EXCLUSIONS; EXEMPTIONS.**

**Subdivision 1. Exclusions.** (a) Bingo may be conducted without a license and without complying with sections 349.17, subdivision 1, and 349.18, if it is conducted:

- (1) in connection with a county fair, the state fair, or a civic celebration if it is not conducted for more than 12 consecutive days in a calendar year; or
- (2) by an organization that conducts four or fewer bingo occasions in a calendar year.

An organization that holds a license to conduct lawful gambling under this chapter may not conduct bingo under this subdivision.

(b) Bingo may be conducted within a nursing home or a senior citizen housing project or by a senior citizen organization without compliance with sections 349.11 to 349.213 if the prizes for a single bingo game do not exceed \$10, total prizes awarded at a single bingo occasion do not exceed \$200, no more than two bingo occasions are held by the organization or at the facility each week, only members of the organization or residents of the nursing home or housing project are allowed to play in a bingo game, no compensation is paid for any persons who conduct the bingo, a manager is appointed to supervise the bingo, and the manager registers with the board. The gross receipts from bingo conducted under the limitations of this subdivision are exempt from taxation under chapter 297A.

(c) Raffles may be conducted by an organization 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.

**Subd. 2. Exemptions.** (a) Lawful gambling may be conducted by an organization as defined in section 349.12, subdivision 28, without complying with sections 349.151 to 349.16; 349.167; 349.168; 349.18; 349.19; 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.
- (b) If the organization fails to file a timely report as required by paragraph (a), 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 later filed and the penalty paid.
- (c) Merchandise prizes must be valued at their fair market value.
- (d) 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.

(e) An organization that is exempt from taxation on purchases of pull-tabs and tipboards under section 349.212, subdivision 4, paragraph (c), must return to the distributor any tipboard or pull-tab deal no part of which is used at the lawful gambling occasion for which it was purchased by the organization.

**Subd. 3. Raffles; certain organizations.** Sections 349.21 and 349.211, subdivision 3, and the membership requirements of sections 349.14 and 349.20 do not apply to raffles conducted by an organization that directly or under contract to the state or a political subdivision delivers health or social services and that is a 501(c)(3) organization if the prizes awarded in the raffles are real or personal property donated by an individual, firm, or other organization. The person who accounts for the gross receipts, expenses, and profits of the raffles may be the same person who accounts for other funds of the organization.

**Subd. 4. Taxation.** An organization's receipts from lawful gambling that is exempt from licensing under this section are not subject to the tax imposed by section 297A.02 or 349.212.

**History:** 1989 c 334 art 2 s 51; 1990 c 590 art 1 s 24

### 349.167 GAMBLING MANAGERS.

**Subdivision 1. Gambling manager required.** (a) All lawful gambling conducted by a licensed organization must be under the supervision of a gambling manager. A gambling manager designated by an organization to supervise lawful gambling is responsible for the gross receipts of the organization and for its conduct in compliance with all laws and rules. The organization must maintain, or require the person designated as a gambling manager to maintain, a fidelity bond in the sum of \$25,000 in favor of the organization and the state, conditioned on (1) the faithful performance of the manager's duties; and (2) the payment of all taxes due under this chapter on lawful expenditures of gross profits from lawful gambling. The terms of the bond must provide that notice be given to the board in writing not less than 30 days before its cancellation. In the case of conflicting claims against a bond, a claim by the state has preference over a claim by the organization.

(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.

(d) An organization may not have more than one gambling manager at any time.

**Subd. 2. Gambling managers; licenses.** A person may not serve as a gambling manager for an organization unless the person possesses a valid gambling manager's license issued by the board. The board may issue a gambling manager's license to a person applying for the license who:

- (1) has received training as required in subdivision 4;
- (2) has never been convicted of a felony;
- (3) within the five years before the date of the license application, has not committed a violation of law or board rule that resulted in the revocation of a license issued by the board;
- (4) has never been convicted of a criminal violation involving fraud, theft, tax evasion, misrepresentation, or gambling;
- (5) has never been convicted of (i) assault, (ii) a criminal violation involving the use of a firearm, or (iii) making terroristic threats; and
- (6) has not engaged in conduct the board determines is contrary to the public health, welfare, or safety or the integrity of lawful gambling.

A gambling manager's license is valid for one year unless suspended or revoked. The annual fee for a gambling manager's license is \$100.

**Subd. 3. Suspension; revocation.** The board may suspend or revoke, as provided in board rules, a gambling manager's license for a violation of law or board rule. A suspension or revocation is a contested case under sections 14.57 to 14.69 of the administrative procedure act.

**Subd. 4. Training of gambling managers.** The board shall by rule require all per-

sons licensed as gambling managers to receive periodic training in laws and rules governing lawful gambling. The rules must contain the following requirements:

(1) each gambling manager must have received such training before being issued a new license;

(2) each gambling manager applying for a renewal of a license must have received training within the three years prior to the date of application for the renewal; and

(3) the training required by this subdivision may be provided by a person, firm, association, or organization authorized by the board to provide the training. Before authorizing a person, firm, association, or organization to provide training, the board must determine that:

(i) the provider and all of the provider's personnel conducting the training are qualified to do so;

(ii) the curriculum to be used fully and accurately covers all elements of lawful gambling law and rules that the board determines are necessary for a gambling manager to know and understand;

(iii) the fee to be charged for participants in the training sessions is fair and reasonable; and

(iv) the training provider has an adequate system for documenting completion of training.

The rules may provide for differing training requirements for gambling managers based on the class of license held by the gambling manager's organization.

The board or the director may provide the training required by this subdivision using employees of the division.

**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 gambling manager'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. 6. Recruitment of gambling managers.** No organization may seek or accept assistance from a manufacturer or distributor, or a representative, agent, affiliate, or employee of a manufacturer or distributor, in identifying or recruiting candidates to become a gambling manager for the organization.

**History:** 1990 c 590 art 1 s 25

### 349.168 GAMBLING EMPLOYEES.

**Subdivision 1. Registration of employees.** A person may not receive compensation for participating in the conduct of lawful gambling as an employee of a licensed organization unless the person has first registered with the board on a form the board prescribes. The form must require each registrant to provide: (1) the person's name, address, and social security number; (2) a current photograph; (3) the name, address, and license number of the employing organization; and (4) a listing of all employment in the conduct of lawful gambling within the previous three years, including the name and address of each employing organization and the circumstances under which the employment was terminated.

**Subd. 2. Identification of employees.** The board shall issue to each person registering under subdivision 1 a registration number and identification card which must include the employee's photograph. Each person receiving compensation for the conduct of lawful gambling must wear the identification card provided by the board at all times while conducting the lawful gambling.

**Subd. 3. Compensation.** 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 the following persons may receive compensation without being active members: (1) sellers of pull-tabs, tipboards, raffle tickets, paddlewheel tickets, and bingo paper; (2) account-

tants performing auditing or bookkeeping services for the organization; and (3) attorneys providing legal services to the organization. The board may by rule allow other persons not active members of the organization to receive compensation.

**Subd. 4. Amounts paid.** The amounts of compensation that 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. 5. Compensation records.** An organization paying compensation to persons who participate in 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 itemize each payment made to each recipient of compensation and must include the amount and the full name, address, and membership status of each recipient.

**Subd. 6. 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, and paid directly to the employee.

**Subd. 7. Penalty.** (a) An organization that makes payment of compensation, or causes compensation to be made, that violates subdivision 4 must 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 must 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 must 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. 8. Percentage of gross profit paid.** A licensed organization may pay a percentage of the gross profit from raffle ticket sales to a nonprofit organization that sells raffle tickets for the licensed organization.

**History:** 1990 c 590 art 1 s 26

### 349.169 FILING OF PRICES.

**Subdivision 1. Filing required.** All manufacturers and distributors must file with the director, not later than the first day of each month, the prices at which the manufacturer or distributor will sell all gambling equipment in that month. The filing must be on a form the director prescribes. Prices filed must include all charges the manufacturer or distributor makes for each item of gambling equipment sold, including all volume discounts, exclusive of transportation costs. All filings are effective on the first day of the month for which they are filed, except that a manufacturer or distributor may amend a filed price within five days of filing it.

**Subd. 2. Copies.** The director shall provide copies of price filings to any person requesting them and may charge a reasonable fee for the copies. Any person may examine price filings in the division office at no cost, and the director shall make the filings available for that purpose.

**Subd. 3. Sales at filed prices.** No manufacturer may sell to a distributor, and no distributor may sell to an organization, any gambling equipment for any price other than a price the manufacturer or distributor has filed with the director under subdivision 1, exclusive of transportation costs.

**History:** 1990 c 590 art 1 s 27

**349.17 CONDUCT OF BINGO.**

Subdivision 1. **Bingo occasions.** Not more than seven bingo occasions each week may be conducted by an organization. At least 15 bingo games must be held at each occasion and a bingo occasion must continue for at least 1-1/2 hours but not more than four consecutive hours.

Subd. 2. **Bingo on leased premises.** During any bingo occasion conducted by an organization, the organization is directly responsible for the:

- (1) staffing of the bingo occasion;
- (2) conducting of lawful gambling during the bingo occasion;
- (3) acquiring, storage, inventory control, and reporting of all gambling equipment used by the organization;
- (4) receipt, accounting, and all expenditures of gross receipts from lawful gambling; and
- (5) preparation of the bingo packets.

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.

Subd. 3. Each bingo winner must be determined and every prize shall be awarded and delivered the same day on which the bingo occasion is conducted.

Subd. 4. **Checkers.** One or more checkers must be engaged for each bingo occasion. The checker or checkers must record, on a form the board provides, the number of cards played in each game and the prizes awarded to recorded cards. The form must provide for the inclusion of the registration number of each card and must include a checker's certification that the figures recorded are correct to the best of the checker's knowledge.

Subd. 5. **Bingo card numbering.** (a) The board shall by rule require that all licensed organizations: (1) conduct bingo only using liquid daubers on cards that bear an individual number recorded by the distributor; (2) sell all bingo cards only in the order of the numbers appearing on the cards; and (3) use each bingo card for no more than one bingo occasion. In lieu of the requirements of clauses (2) and (3), a licensed organization may electronically record the sale of each bingo card at each bingo occasion using an electronic recording system approved by the board.

(b) The requirements of paragraph (a) do not apply to a licensed organization that (1) has never received gross receipts from bingo in excess of \$150,000 in any year, and (2) does not pay compensation to any person for participating in the conduct of lawful gambling.

**History:** 1976 c 261 s 7; 1979 c 166 s 1; 1984 c 502 art 12 s 11; 1986 c 467 s 16; 1987 c 327 s 15,16; 1988 c 596 s 3,4; 1989 c 334 art 2 s 26; 1990 c 590 art 1 s 28

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

**349.172 PULL-TABS; INFORMATION REQUIRED TO BE POSTED.**

An organization selling pull-tabs must post for each deal of pull-tabs all major prizes that have been awarded for pull-tabs purchased from that deal. The information must be posted prominently at the point of sale of the deal. An easily legible pull-tab flare that lists prizes in that deal, and on which prizes are marked or crossed off as they are awarded, satisfies the requirement of this section that major prizes be posted, provided that a separate flare is posted for each deal of pull-tabs. An organization must post or mark off each major prize immediately upon awarding the prize. A "major prize" in a deal of pull-tabs is any prize that is at least 50 times the face value of any pull-tab in the deal.

**History:** 1990 c 590 art 1 s 29

**349.174 PULL-TABS; DEADLINE FOR USE.**

A deal of pull-tabs and tipboards received by an organization before September 1, 1989, must be put into play by that organization before September 1, 1990, unless the deal bears a serial number that allows it to be traced back to its manufacturer and to the distributor who sold it to the organization. An organization in possession on and after September 1, 1990, of a deal of pull-tabs and tipboards the organization received before September 1, 1989, may not put such a deal in play but must remove it from the organization's inventory and return it to the manufacturer.

**History:** 1990 c 590 art 1 s 30

**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 on a form prescribed by the board. 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 on the leased premises during times when lawful gambling is being conducted on the premises.

**Subd. 1a. Storage of gambling equipment.** (a) Gambling equipment owned by or in the possession of an 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. Gambling equipment owned by an organization may not be kept at a distributor's office, warehouse, storage unit, or other place of the distributor's business.

(b) Gambling equipment, other than devices for selecting bingo numbers, owned by an organization must be secured and kept separate from gambling equipment owned by other persons, organizations, distributors, or manufacturers.

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

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

**Subd. 2. Exceptions.** (a) An organization may conduct raffles on a premise it does not own or lease.

(b) An organization may, with the permission of the board, conduct bingo on premises it does not own or lease for up to 12 consecutive days in a calendar year, in connection with a county fair, the state fair, or a civic celebration.

(c) A licensed organization may, after compliance with section 349.213, conduct lawful gambling on premises other than the organization's licensed premise for one day per year for not more than 12 hours that day. A lease for that time period for the exempted premises must accompany the request to the board.

**Subd. 3. Proceeds from rental.** Rental proceeds from premises owned by an organization and leased to one or more other organizations for the purposes of conducting lawful gambling shall not be reported as gambling proceeds under this chapter.

**Subd. 4. Prohibition.** (a) An organization may not pay rent to itself or to any of its affiliates for use of space for conducting lawful gambling.

(b) An organization may not pay rent for space for conducting lawful gambling from any account or fund other than the organization's separate gambling account.

Subd. 5. **Certain agreements prohibited.** An organization may not enter into or be a party to a lending agreement under which any of the organization's receipts from lawful gambling are pledged as collateral for a loan.

**History:** 1976 c 261 s 8; 1984 c 502 art 12 s 12; 1986 c 467 s 18; 1987 c 327 s 17,18; 1989 c 334 art 2 s 27,28; 1990 c 590 art 1 s 31

### 349.19 RECORDS AND REPORTS.

Subdivision 1. **Required record of receipts.** A licensed organization must keep a record of each occasion on which it conducts gambling, including each bingo occasion and each day on which other forms of lawful gambling are conducted. The record must include gross receipts, quantities of free plays if any, expenses, prizes, and gross profit. The board may by rule provide for the methods by which expenses are documented. In the case of bingo, gross receipts must be compared to the checkers' records for the occasion by a person who did not sell cards for the occasion. Separate records must be kept for bingo and all other forms of lawful gambling.

Subd. 2. **Accounts.** Gross receipts from lawful gambling by each organization at each permitted premises must be segregated from all other revenues of the conducting organization and placed in a separate account. All expenditures for expenses, taxes, and lawful purposes must be made from the separate account except in the case of expenditures previously approved by the organization's membership for emergencies as defined by board rule. 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 three days 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, and must be in compliance with section 349.154. Authorization of the expenditures must be recorded in the monthly meeting minutes of the licensed organization. Checks for expenditures of gross profits must be signed by at least two persons authorized by board rules to sign the checks.

Subd. 4. **Discrepancies.** If at a bingo occasion a discrepancy of more than \$20 is found between the gross receipts as reported by the checkers and the gross receipts determined by adding the cash receipts, the discrepancy must be reported to the board within five days of the bingo occasion.

Subd. 5. **Reports.** A licensed organization must report to the board and to its membership monthly, or quarterly in the case of a licensed organization which does not report more than \$1,000 in gross receipts from lawful gambling in any calendar quarter, on its gross receipts, expenses, profits, and expenditure of profits from lawful gambling. If the organization conducts both bingo and other forms of lawful gambling, the figures for both must be reported separately. In addition, a licensed organization must report to the board monthly on its purchases of gambling equipment and must include the type, quantity, and dollar amount from each supplier separately. The reports must be on a form the board prescribes. Submission of the report required by section 349.154 satisfies the requirement for reporting monthly to the board on expenditure of net profits.

Subd. 6. **Preservation of records.** Records required to be kept by this section must be preserved by a licensed organization for at least 3-1/2 years and may be inspected

by the commissioner of revenue, the commissioner of gaming, or the commissioner of public safety at any reasonable time without notice or a search warrant.

**Subd. 7. Tax records.** The board may by rule require each licensed organization to provide copies of forms it files with the United States Department of the Treasury which are required for organizations exempt from income tax.

**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. The board shall by rule prescribe standards for the audit, which must provide for the reconciliation of the organization's gambling account or accounts with the organization's reports filed under subdivision 5 and section 349.154. A complete, true, and correct copy of the audit report must be filed with the board upon completion of the audit.

**Subd. 10. Pull-tab records.** The board shall by rule require a licensed organization to require each winner of a pull-tab prize of \$50 or more to present identification in the form of a drivers license, Minnesota identification card, or other identification the board deems sufficient to allow the identification and tracing of the winner. The rule must require the organization to retain winning pull-tabs of \$50 or more, and the identification of the winner of the pull-tab, for 3-1/2 years.

**Subd. 11. Information made part of organization minutes.** A licensed organization which receives a copy of a written audit under subdivision 9, or an audit or compliance report prepared by an agency of the state, must place the audit report or compliance report in the minutes of the next meeting of the organization following receipt of the report. Copies of such minutes must be made available to all members of the organization upon request.

**History:** 1976 c 261 s 9; 1984 c 502 art 12 s 13; 1986 c 467 s 19,20; 1987 c 327 s 19; 1988 c 596 s 5; 1989 c 334 art 2 s 29-33; 1Sp1989 c 1 art 13 s 11; 1990 c 590 art 1 s 32

### 349.191 SALES ON CREDIT.

**Subdivision 1. Credit restriction.** A manufacturer may not offer or extend to a distributor, and a distributor may not extend to an organization, credit for a period of more than 30 days for the sale of any gambling equipment. No right of action exists for the collection of any claim based on credit prohibited by this subdivision. The 30-day period allowed by this subdivision begins with the day immediately following the day of invoice and includes all successive days, including Sundays and holidays, to and including the 30th successive day.

**Subd. 2. Invoices.** All invoices prepared by a manufacturer or distributor and presented as part of a credit transaction for the purchase of gambling equipment must clearly bear the words "Notice: State Law Prohibits the Extension of Credit For This Sale For More Than 30 Days."

**Subd. 3. Rules.** Any rule of the board which requires a manufacturer to report to the board any distributor who is delinquent in payment for gambling equipment must provide that a distributor is subject to the rule if the distributor is more than 30 days delinquent in payment to a manufacturer.

**Subd. 4. Credit; postdated checks.** For purposes of this subdivision, "credit" includes acceptance by a manufacturer or distributor of a postdated check in payment for gambling equipment.

**History:** 1990 c 590 art 1 s 33



**349.20** [Repealed, 1990 c 590 art 1 s 55]

**349.21** [Repealed, 1990 c 590 art 1 s 55]

### **349.211 PRIZE LIMITS.**

Subdivision 1. **Bingo.** Prizes for a single bingo game may not exceed \$100 except prizes for a cover-all game, which may exceed \$100 if the aggregate value of all cover-all prizes in a bingo occasion does not exceed \$500. Total prizes awarded at a bingo occasion may not exceed \$2,500, unless a cover-all game is played in which case the limit is \$3,000. For purposes of this subdivision, a cover-all game is one in which a player must cover all spaces except a single free space to win.

Subd. 2. **Bingo cumulative prizes.** A prize of up to \$1,000 may be awarded for a single bingo game if the prize is an accumulation of prizes not won in games in previous bingo occasions. The total amount awarded in cumulative prizes in any calendar year may not exceed \$12,000. For bingo occasions in which a cumulative prize is awarded the aggregate value of prizes which may be awarded for the occasion is increased by the amount of the cumulative prize so awarded less \$100.

Subd. 2a. **Pull-tab prizes.** The maximum prize which may be awarded for any single pull-tab is \$250. An organization may not sell any pull-tab for more than \$2.

Subd. 3. **Other gambling.** The board by rule shall establish a schedule of prize limits for all other forms of gambling consistent with the purposes set out in section 349.11. The schedule may include daily and annual prize limits and prize limits for each game, raffle or operation of a gambling device.

Subd. 4. **Prize value.** Merchandise prizes must be valued at their fair market value. For purposes of sections 349.11 to 349.22 "prizes" do not include free plays awarded.

**History:** 1984 c 502 art 12 s 16; 1986 c 467 s 21

### **349.212 TAX IMPOSED.**

Subdivision 1. **Imposition.** There is hereby imposed a tax on all lawful gambling, other than (1) pull-tabs purchased and placed into inventory after January 1, 1987, and (2) tipboards purchased and placed into inventory after June 30, 1988, at the rate of ten percent on the gross receipts as defined in section 349.12, subdivision 21, less prizes actually paid. The tax imposed by this subdivision is in lieu of the tax imposed by section 297A.02 and all local taxes and license fees except a fee authorized under section 349.16, subdivision 4, or a tax authorized under section 349.212, subdivision 5.

The tax imposed under this subdivision is payable by the organization or party conducting, directly or indirectly, the gambling.

Subd. 2. **Collection; disposition.** The taxes imposed by this section are due and payable to the commissioner of revenue at the time when the gambling tax return is required to be filed. Returns covering the taxes imposed under this section must be filed with the commissioner of revenue on or before the 20th day of the month following the close of the previous calendar month. The commissioner may require that the returns be filed via magnetic media or electronic data transfer. The proceeds, along with the revenue received from all license fees and other fees under sections 349.11 to 349.21 and 349.211, 349.212, and 349.213, must be paid to the state treasurer for deposit in the general fund.

Subd. 3. [Repealed, 1Sp1985 c 13 s 376 subd 1]

Subd. 4. **Pull-tab and tipboard tax.** (a) There is imposed a tax on the sale of each deal of pull-tabs and tipboards sold by a licensed distributor. The rate of the tax is two percent of the ideal gross of the pull-tab or tipboard deal. The sales tax imposed by chapter 297A on the sale of the pull-tabs and tipboards by the licensed distributor is imposed on the retail sales price less the tax imposed by this subdivision. The retail sale of pull-tabs or tipboards by the organization is exempt from taxes imposed by chapter 297A and is exempt from all local taxes and license fees except a fee authorized under section 349.16, subdivision 4.

(b) The liability for the tax imposed by this section is incurred when the pull-tabs

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and tipboards are delivered by the distributor to the customer, to a common or contract carrier for delivery to the customer, or when received by the customer's authorized representative at the distributor's place of business, regardless of the distributor's method of accounting or the terms of the sale.

The tax imposed by this subdivision is imposed on all sales of pull-tabs and tipboards, except the following:

(1) sales to the governing body of an Indian tribal organization for use on an Indian reservation;

(2) sales to distributors licensed under this chapter;

(3) sales to distributors licensed under the laws of another state or of a province of Canada, as long as all statutory and regulatory requirements are met in the other state or province; and

(4) sales of promotional tickets as defined in section 349.12.

(c) Pull-tabs and tipboards sold to an organization that sells pull-tabs and tipboards under the exemption from licensing in section 349.214, subdivision 2, paragraph (b), are exempt from the tax imposed by this subdivision. A distributor must require an organization conducting exempt gambling to show proof of its exempt status before making a tax-exempt sale of pull-tabs or tipboards to such an organization. A distributor shall identify, on all reports submitted to the commissioner, all sales of pull-tabs and tipboards that are exempt from tax under this subdivision.

**Subd. 5. Local gambling tax.** A statutory or home rule charter city which has one or more licensed organizations operating lawful gambling, and a county which has one or more licensed organizations outside incorporated areas operating lawful gambling, may impose a local gambling tax on each licensed organization within the city's or county's jurisdiction. The tax may be imposed only if the amount to be received by the city or county is necessary to cover the costs incurred by the city or county to regulate lawful gambling. The tax imposed by this subdivision may not exceed three percent of the gross receipts of a licensed organization from all lawful gambling less prizes actually paid out by the organization. A city or county may not use money collected under this subdivision for any purpose other than for the purpose of regulating lawful gambling. A tax imposed under this subdivision is in lieu of all other local taxes and local investigation fees on lawful gambling. Any city or county that imposes a tax under this subdivision shall annually by March 15 file a report with the board in a form prescribed by the board showing (1) the amount of revenue produced by the tax during the preceding calendar year, and (2) the use of the proceeds of the tax.

**Subd. 6. Combined receipts tax.** In addition to the taxes imposed under subdivisions 1 and 4, there is imposed a tax on the combined receipts of the organization. As used in this section, "combined receipts" is the sum of the organization's gross receipts from lawful gambling less gross receipts directly derived from the conduct of bingo, raffles, and paddlewheels, as defined in section 349.12, subdivision 21, for the fiscal year. The combined receipts of an organization are subject to a tax computed according to the following schedule:

If the combined receipts for the  
fiscal year are:

The tax is:

Not over \$500,000

zero

Over \$500,000 but not over \$700,000

two percent of the  
amount over \$500,000  
but not over \$700,000

Over \$700,000 but not over \$900,000

\$4,000 plus four  
percent of the amount  
over \$700,000 but  
not over \$900,000

· Over \$900,000

\$12,000 plus six  
percent of the amount  
over \$900,000

**Subd. 7. Untaxed pull-tabs and tipboards.** In addition to penalties or criminal sanctions imposed by this chapter, any person, organization, or business entity possessing a pull-tab or tipboard upon which the tax imposed by subdivision 4 has not been paid is liable for a tax of six percent of the ideal gross of each pull-tab or tipboard. The tax on a partial deal shall be assessed as if it were a full deal.

The tax shall be assessed by the commissioner. An assessment shall be considered a jeopardy assessment or jeopardy collection as provided in section 270.70. The commissioner shall assess the tax based on personal knowledge or information available to the commissioner. The commissioner shall mail to the taxpayer at the taxpayer's last known address, or serve in person, a written notice of the amount of tax, demand its immediate payment, and, if payment is not immediately made, collect the tax by any method described in chapter 270, except that the commissioner need not await the expiration of the times specified in chapter 270. The tax assessed by the commissioner is presumed to be valid and correctly determined and assessed. The burden is upon the taxpayer to show its incorrectness or invalidity.

**History:** 1984 c 502 art 12 s 17; 1985 c 3 s 1; 1986 c 467 s 22,23; 1Sp1986 c 3 art 2 s 14,15; 1987 c 268 art 15 s 1-3; 1988 c 719 art 9 s 4,5; 1989 c 334 art 2 s 51; 1Sp1989 c 1 art 13 s 12-15; 1990 c 480 art 10 s 8,9; 1990 c 590 art 1 s 34

### 349.2121 PULL-TAB TAX; COLLECTION.

**Subdivision 1. Application and issuance.** Every distributor licensed by the board who sells pull-tabs and tipboards to organizations authorized to sell pull-tabs and tipboards under this chapter must file with the commissioner of revenue an application, on a form the commissioner prescribes, for a gambling tax identification number and gambling tax permit. The commissioner, when satisfied that the applicant has a valid license from the board, shall issue the applicant a permit and number. A permit is not assignable and is valid only for the distributor in whose name it is issued.

**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.

**Subd. 2a.** A distributor who sells pull-tabs and tipboards to persons other than the ultimate consumer shall give with each sale an itemized invoice showing the distributor's name and address, the purchaser's name and address, the date of the sale, description of the deals including the ideal net amounts, and all prices and discounts, and shall keep legible copies of all the itemized invoices for 3-1/2 years from the date of sale.

**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.

**Subd. 4. [Repealed, 1Sp1989 c 1 art 13 s 29]**

**Subd. 4a. Refund.** If any deal of pull-tabs or tipboards registered with the board and upon which the tax imposed by section 349.212, subdivision 4, has been paid is returned unplayed to the distributor, the commissioner of revenue shall allow a refund of the tax paid.

In the case of a defective deal registered with the board and upon which the taxes have been paid is returned to the manufacturer, the distributor shall submit to the commissioner of revenue certification from the manufacturer that the deal was returned and in what respect it was defective. The certification must be in a form prescribed by the commissioner and must contain additional information the commissioner requires.

The commissioner may require that no refund under this subdivision be made unless the returned pull-tabs or tipboards have been set aside for inspection by the commissioner's employee.

Reductions in previously paid taxes authorized by this subdivision shall be made at the time and in the manner prescribed by the commissioner.

**Subd. 5. Public information.** All records concerning the administration of the pull-tab and tipboard taxes are classified as public information.

**Subd. 6. Collections; civil penalties.** (1) The provisions of chapter 297A relating to the commissioner's authority to audit, assess, and collect the tax imposed by that chapter apply to the tax, penalties and interest imposed by section 349.212, subdivision 4. The commissioner shall impose civil penalties for violation of this section as provided in section 289A.60, and the additional tax and penalties are subject to interest at the rate provided in section 270.75.

(2) If any part of any additional assessment is due to negligence or intentional disregard of the provisions of this chapter or rules of the commissioner of revenue (but without intent to defraud), there shall be added to the tax an amount equal to ten percent of the additional assessment. The amount of the tax together with this amount shall bear interest at the rate stated in section 270.75 from the time the tax should have been paid until paid.

**Subd. 7. Rules.** The commissioner may adopt rules, including emergency rules, for the administration and enforcement of this section and section 349.212, subdivision 4.

**Subd. 8. Personal debt.** The tax imposed by section 349.212 and interest and penalties imposed with respect to it, shall be a personal debt of the person required to file a return from the time the liability for it arises, irrespective of when the time for payment of the liability occurs. The debt shall, in the case of the executor or administrator

of the estate of a decedent and in the case of any fiduciary, be that of the person in the person's official or fiduciary capacity only unless the person has voluntarily distributed the assets held in that capacity without reserving sufficient assets to pay the tax, interest, and penalties, in which event the person shall be personally liable for any deficiency.

**Subd. 9. Refunds; appropriation.** A person who has, under this chapter, paid to the commissioner an amount of tax for any period in excess of the amount legally due for that period, may file with the commissioner of revenue a claim for a refund of the excess. The amount necessary to pay the refunds is appropriated from the general fund to the commissioner.

**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:** 1986 c 467 s 24; 1Sp1986 c 3 art 2 s 17; 1987 c 268 art 15 s 4-10; 1987 c 384 art 1 s 33; 1988 c 719 art 9 s 6-11; 1989 c 334 art 2 s 36-38; 1990 c 480 art 1 s 46

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

A manufacturer licensed by the board who sells pull-tabs and tipboards to a licensed distributor must file with the commissioner of revenue, on a form prescribed by the commissioner, a report of pull-tabs and tipboards sold to any person in the state, including the established governing body of Indian tribes recognized by the United States Department of the Interior. 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 may require that the report be submitted via magnetic media or electronic data transfer. 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:** 1987 c 268 art 15 s 11; 1988 c 719 art 9 s 12; 1989 c 334 art 2 s 39; 1990 c 590 art 1 s 35

### **349.2123 CERTIFIED PHYSICAL INVENTORY.**

The board or commissioner of revenue may, upon request, require a distributor to furnish a certified physical inventory of all gambling equipment in stock. The inventory must contain the information required by the board or the commissioner.

**History:** 1987 c 268 art 15 s 12; 1988 c 719 art 9 s 13; 1990 c 590 art 1 s 36

### **349.2124 SALES TO INDIAN TRIBES.**

A distributor may set aside that part of the distributor's stock necessary for the conduct of business in making sales to the established governing body of any Indian tribe recognized by the United States Department of Interior. A distributor shall, when shipping or delivering any stock to an Indian tribal organization, make a true duplicate invoice showing the complete details of the sale or delivery and shall keep the duplicate.

**History:** 1987 c 268 art 15 s 13

### **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;

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

(11) any gambling equipment not in conformity with law or board rule.

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 ten days after the seizure of any alleged contraband, the person making the seizure shall make available 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 60 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 by the seizing authority 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 seizing authority 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.

Subd. 4. **Disposal.** (a) The property described in subdivision 1, clauses (4) and (5), must be confiscated after conviction of the person from whom it was seized, upon compliance with the following procedure: the seizing authority shall file with the court a separate complaint against the property, describing it and charging its use in the specific

violation, and specifying substantially the time and place of the unlawful use. A copy of the complaint must be served upon the defendant or person in charge of the property at the time of seizure, if any. If the person arrested is acquitted, the court shall dismiss the complaint against the property and order it returned to the persons legally entitled to it. Upon conviction of the person arrested, the court shall issue an order directed to any person known or believed to have any right, title or interest in, or lien upon, any of the property, and to persons unknown claiming any right, title, interest, or lien in it, describing the property and (1) stating that it was seized and that a complaint against it, charging the specified violation, has been filed with the court, (2) requiring the persons to file with the court administrator their answer to the complaint, setting forth any claim they may have to any right or title to, interest in, or lien upon the property, within 30 days after the service of the order, and (3) notifying them in substance that if they fail to file their answer within the time, the property will be ordered sold by the seizing authority. The court shall cause the order to be served upon any person known or believed to have any right, title, interest, or lien as in the case of a summons in a civil action, and upon unknown persons by publication, as provided for service of summons in a civil action. If no answer is filed within the time prescribed, the court shall, upon affidavit by the court administrator, setting forth the fact, order the property sold by the seizing authority. Seventy percent of the proceeds of the sale of forfeited property, after payment of seizure, storage, forfeiture and sale expenses, must be forwarded to the seizing authority for deposit as a supplement to its operating fund or similar fund for official use, and 20 percent must be forwarded to the county attorney or other prosecuting agency that handled the forfeiture for deposit as a supplement to its operating fund or similar fund for prosecutorial purposes. The remaining ten percent of the proceeds must be forwarded within 60 days after resolution of the forfeiture to the department of human services to fund programs for the treatment of compulsive gamblers. If answer is filed within the time provided, the court shall fix a time for a hearing, which shall be not less than ten nor more than 30 days after the time for filing answer expires. At the time fixed for hearing, unless continued for cause, the matter shall be heard and determined by the court, without a jury, as in other civil actions.

(b) If the court finds that the property, or any part of it, was used in the violation specified in the complaint, it shall order the property unlawfully used, sold as provided by law, unless the owner shows to the satisfaction of the court that the owner had no notice or knowledge or reason to believe that the property was used or intended to be used in the violation. The officer making a sale, after deducting the expense of keeping the property, the fee for seizure, and the costs of the sale, shall pay all liens according to their priority, which are established at the hearing as being bona fide and as existing without the lienor having any notice or knowledge that the property was being used or was intended to be used for or in connection with the violation specified in the order of the court, and shall pay the balance of the proceeds to the seizing authority for official use and sharing in the manner provided in paragraph (a). A sale under this section shall free the property sold from any and all liens on it. Appeal from the order of the district court will lie as in other civil cases. At any time after seizure of the articles specified in this subdivision, and before the hearing provided for, the property must be returned to the owner or person having a legal right to its possession, upon execution of a good and valid bond to the state, with corporate surety, in the sum of not less than \$100 and not more than double the value of the property seized, to be approved by the court in which the case is triable, or a judge of it, conditioned to abide any order and the judgment of the court, and to pay the full value of the property at the time of the seizure. The seizing authority may dismiss the proceedings outlined in this subdivision when the seizing authority considers it to be in the public interest to do so.

**History:** 1988 c 719 art 9 s 14; 1989 c 334 art 2 s 40-42; 1990 c 590 art 2 s 1-3

### 349.2127 PROHIBITIONS.

**Subdivision 1. Counterfeiting.** A person is guilty of a felony who, with intent to defraud the state, makes, alters, forges, or counterfeits any license or stamp provided

for in this chapter, or has in possession any forged, spurious, or altered stamps, with the intent, or with the result of, depriving the state of the tax imposed by this chapter.

**Subd. 2. Prohibition against possession.** (a) A person, other than a licensed distributor, is guilty of a crime who sells, offers for sale, or possesses a pull-tab or tipboard deal not stamped in accordance with the provisions of this chapter. A violation of this paragraph is a gross misdemeanor if it involves ten or fewer pull-tab or tipboard deals. A violation of this paragraph is a felony if it involves more than ten pull-tab or tipboard deals, or a combination of more than ten deals of pull-tabs and tipboards.

(b) A person, other than a licensed distributor or an organization licensed or exempt or excluded from licensing under this chapter, is guilty of a crime who sells, offers to sell, or possesses gambling equipment. A violation of this paragraph is a gross misdemeanor if it involves ten or fewer pull-tab or tipboard deals. A violation of this paragraph is a felony if it involves more than ten pull-tab or tipboard deals, or a combination of more than ten deals of pull-tabs and tipboards.

(c) A person, firm, or organization is guilty of a crime who alters, modifies, or counterfeits pull-tabs, tipboards, or tipboard tickets, or possesses altered, modified, or counterfeit pull-tabs, tipboards, or tipboard tickets. A violation of this paragraph is a gross misdemeanor if the total face value for all such pull-tabs, tipboards, or tipboard tickets does not exceed \$200. A violation of this paragraph is a felony if the total face value exceeds \$200. For purposes of this paragraph, the face value of all pull-tabs, tipboards, and tipboard tickets altered, modified, or counterfeited within a six-month period may be aggregated and the defendant charged accordingly.

**Subd. 3. False information.** (a) A person is guilty of a felony if the person is required by section 349.2121, subdivision 2, to keep records or to make returns and falsifies or fails to keep the records or falsifies or fails to make the returns.

(b) A person is guilty of a felony who:

(1) knowingly submits materially false information in any license application or other document or communication submitted to the board; or

(2) knowingly submits materially false information in any report, document, or other communication submitted to the commissioner of revenue in connection with lawful gambling or with any provision of this chapter.

**Subd. 4. Transporting unstamped deals.** A person is guilty of a gross misdemeanor who transports into, or receives, carries, or moves from place to place in this state, any deals of pull-tabs or tipboards not stamped in accordance with this chapter except in the course of interstate commerce. A person is guilty of a felony who violates this subdivision with respect to more than ten pull-tab or tipboard deals, or a combination of more than ten deals of pull-tabs and tipboards.

**Subd. 5. Providing information.** (a) An employee of an organization may not provide any information to a player that would provide an unfair advantage to the player related to the potential winnings of any lawful gambling activity.

(b) An employee may not provide, and a person may not receive, with expectation of pecuniary gain to either, any information that would provide an unfair advantage to the recipient of the information related to the potential winnings of any lawful gambling activity. A person who violates this paragraph is guilty of a gross misdemeanor. A person who violates this paragraph within five years after a previous conviction under this paragraph is guilty of a felony.

(c) For purposes of this subdivision, "employee" includes a volunteer.

**Subd. 6. Unlawful expenditures.** (a) A person who knowingly or with reason to know makes an unlawful expenditure of gross profits from lawful gambling is guilty of a crime and may be sentenced as provided in this subdivision.

(b) If the unlawful expenditure is of \$200 or less, the penalty in section 349.22, subdivision 1, applies.

(c) If the unlawful expenditure is of more than \$200 but not more than \$2,500, the person is guilty of a gross misdemeanor.



(d) If the unlawful expenditure is of more than \$2,500, the person is guilty of a felony.

(e) For purposes of this subdivision, expenditures made within a six-month period may be aggregated and the defendant charged accordingly.

**Subd. 7. Checks for gambling purchases.** An organization may not accept checks in payment for the purchase of any gambling equipment or for the chance to participate in any form of lawful gambling.

**History:** 1988 c 719 art 9 s 15; 1989 c 334 art 2 s 43; 1Sp1989 c 1 art 13 s 16,17; 1990 c 590 art 2 s 4-10

### 349.213 LOCAL AUTHORITY.

**Subdivision 1. Local regulation.** (a) A statutory or home rule city or county has the authority to adopt more stringent regulation of lawful gambling within its jurisdiction, including the prohibition 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.

(b) 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. A trade area defined by a city under this subdivision must include each city contiguous to the defining city.

(c) A more stringent regulation or prohibition of lawful gambling adopted by a political subdivision under this subdivision must apply equally to all forms of lawful gambling within the jurisdiction of the political subdivision.

**Subd. 2. Local approval.** Before issuing or renewing a premises permit 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 or bingo halls to notify the appropriate local government at the time of application. This required notification is sufficient to constitute the notice required by this subdivision. The board may not issue or renew a premises permit or bingo hall license unless the organization submits a resolution from the city council or county board approving the premises permit or bingo hall license. The resolution must have been adopted within 60 days of the date of application for the new or renewed permit or license.

**History:** 1984 c 502 art 12 s 18; 1986 c 467 s 25; 1987 c 327 s 21; 1988 c 705 s 1; 1989 c 209 art 1 s 35; 1989 c 334 art 2 s 44,45; 1989 c 335 art 1 s 220; 1990 c 590 art 1 s 37

**349.214** [Repealed, 1990 c 590 art 1 s 55]

**349.215 EXAMINATIONS.**

**Subdivision 1. Examination of taxpayer.** To determine the accuracy of a return or report, or in fixing liability under this chapter, the commissioner of revenue may make reasonable examinations or investigations of a taxpayer's place of business, tangible personal property, equipment, computer systems and facilities, pertinent books, records, papers, vouchers, computer printouts, accounts, and documents.

**Subd. 2. Access to records of other persons in connection with examination of taxpayer.** When conducting an investigation or an audit of a taxpayer, the commissioner of revenue may examine, except where privileged by law, the relevant records and files of a person, business, institution, financial institution, state agency, agency of the United States government, or agency of another state where permitted by statute, agreement, or reciprocity. The commissioner of revenue may compel production of these records by subpoena. A subpoena may be served directly by the commissioner of revenue.

**Subd. 3. Power to compel testimony.** In the administration of this chapter, the commissioner of revenue may:

(1) Administer oaths or affirmations and compel by subpoena the attendance of witnesses, testimony, and the production of a person's pertinent books, records, papers, or other data.

(2) Examine under oath or affirmation any person regarding the business of a taxpayer concerning a matter relevant to the administration of this chapter. The fees of witnesses required by the commissioner of revenue to attend a hearing are equal to those allowed to witnesses appearing before courts of this state. The fees must be paid in the manner provided for the payment of other expenses incident to the administration of state tax law.

(3) In addition to other remedies available, bring an action in equity by the state against a taxpayer for an injunction ordering the taxpayer to file a complete and proper return or amended return. The district courts of this state shall have jurisdiction over the action, and disobedience of an injunction issued under this clause shall be punished as a contempt of district court.

**Subd. 4. Third party subpoena where taxpayer's identity is known.** An investigation may extend to any person that the commissioner of revenue determines has access to information that may be relevant to the examination or investigation. When a subpoena requiring the production of records under subdivision 2 is served on a third-party record keeper, written notice of the subpoena must be mailed to the taxpayer and to any other person who is identified in the subpoena. The notices must be given within three days of the day on which the subpoena is served. Notice to the taxpayer required by this section is sufficient if it is mailed to the last address on record with the commissioner of revenue.

**Subd. 5. Third party subpoena where taxpayer's identity is not known.** A subpoena that does not identify the person or persons whose tax liability is being investigated may be served only if:

(1) the subpoena relates to the investigation of a particular person or ascertainable group or class of persons;

(2) there is a reasonable basis for believing that the person or group or class of persons may fail or may have failed to comply with tax laws administered by the commissioner of revenue;

(3) the subpoena is clear and specific concerning information sought to be obtained; and

(4) the information sought to be obtained is limited solely to the scope of the investigation.

A party served with a subpoena that does not identify the person or persons with respect to whose tax liability the subpoena is issued may, within three days after service

of the subpoena, petition the district court in the judicial district in which that party is located for a determination whether the commissioner of revenue has complied with all the requirements in clauses (1) to (4), and thus, whether the subpoena is enforceable. If no petition is made by the party served within the time prescribed, the subpoena has the effect of a court order.

**Subd. 6. Request by taxpayer for subpoena.** When the commissioner of revenue has the power to issue a subpoena for investigative or auditing purposes, then the commissioner shall honor a reasonable request by the taxpayer to issue a subpoena on the taxpayer's behalf, if in connection with the investigation or audit.

**Subd. 7. Application to court for enforcement of subpoena.** The commissioner of revenue or the taxpayer may apply to the district court of the county of the taxpayer's residence, place of business, or county where the subpoena can be served as with any other case at law, for any order compelling the appearance of the subpoenaed witness or the production of the subpoenaed records. Failure to comply with the order of the court for the appearance of a witness or the production of records may be punished by the court as for contempt.

**Subd. 8. Cost of production of records.** The cost of producing records of a third party required by a subpoena must be paid by the taxpayer, if the taxpayer requests the subpoena to be issued, or if the taxpayer has the records available but has refused to provide them to the commissioner of revenue. In other cases where the taxpayer is unable to produce records and the commissioner of revenue then initiates a subpoena for third-party records, the commissioner shall pay the reasonable cost of producing the records. The commissioner of revenue may later assess the reasonable costs against the taxpayer if the records contribute to the determination of an assessment of tax against the taxpayer.

*History: 1Sp1989 c 1 art 13 s 19*

### 349.2151 ASSESSMENTS.

**Subdivision 1. Generally.** The commissioner of revenue shall make determinations, corrections, and assessments with respect to taxes (including interest, additions to taxes, and assessable penalties) imposed under this chapter.

**Subd. 2. Commissioner of revenue filed returns.** If a taxpayer fails to file a return required by this chapter, the commissioner of revenue may make a return for the taxpayer from information in the commissioner's possession or obtainable by the commissioner. The return is prima facie correct and valid.

**Subd. 3. Order of assessment; notice and demand to taxpayer.** (a) When a return has been filed and the commissioner of revenue determines that the tax disclosed by the return is different than the tax determined by the examination, the commissioner shall send an order of assessment to the taxpayer. The order must explain the basis for the assessment and must explain the taxpayer's appeal rights. An assessment by the commissioner of revenue must be made by recording the liability of the taxpayer in the office of the commissioner of revenue, which may be done by keeping a copy of the order of assessment sent to the taxpayer. An order of assessment is final when made but may be reconsidered by the commissioner under section 349.219.

(b) The amount of unpaid tax shown on the order must be paid to the commissioner of revenue: (1) within 60 days after notice of the amount and demand for its payment have been mailed to the taxpayer by the commissioner of revenue; or (2) if an administrative appeal is filed under section 349.219 within 60 days following the determination or compromise of the appeal.

**Subd. 4. Erroneous refunds.** An erroneous refund is considered an underpayment of tax on the date made. An assessment of a deficiency arising out of an erroneous refund may be made at any time within two years from the making of the refund. If part of the refund was induced by fraud or misrepresentation of a material fact, the assessment may be made at any time.

**Subd. 5. Assessment presumed valid.** A return or assessment made by the commis-

sioner of revenue is prima facie correct and valid. The taxpayer has the burden of establishing the incorrectness or invalidity of the return or assessment in any action or proceeding in respect to it.

**Subd. 6. Aggregate refund or assessment.** On examining returns of a taxpayer for more than one year or period, the commissioner of revenue may issue one order covering the period under examination that reflects the aggregate refund or additional tax due.

**Subd. 7. Sufficiency of notice.** An order of assessment sent by United States mail, postage prepaid to the taxpayer at the taxpayer's last known address, is sufficient even if the taxpayer is deceased or is under a legal disability, or, in the case of a corporation, has terminated its existence, unless the department has been provided with a new address by a party authorized to receive notices of assessment.

**History:** 1Sp1989 c 1 art 13 s 20

### 349.2152 EXTENSIONS FOR FILING RETURNS AND PAYING TAXES.

When, in the commissioner of revenue's judgment, good cause exists, the commissioner may extend the time for filing tax returns and/or paying taxes for not more than six months.

**History:** 1Sp1989 c 1 art 13 s 21

### 349.216 LIMITATIONS ON TIME FOR ASSESSMENT OF TAX.

**Subdivision 1. General rule.** Except as otherwise provided in this chapter, the amount of taxes assessable must be assessed within 3-1/2 years after the return is filed (whether or not the return is filed on or after the date prescribed). A return must not be treated as filed until it is in processible form. A return is in processible form when it is filed on a permitted form and contains sufficient data to identify the taxpayer and permit the mathematical verification of the tax liability shown on the return.

**Subd. 2. False or fraudulent return.** Notwithstanding subdivision 1, the tax may be assessed at any time if a false or fraudulent return is filed or if a taxpayer fails to file a return.

**Subd. 3. Omission in excess of 25 percent.** Additional taxes may be assessed within 6-1/2 years after the due date of the return or the date the return was filed, whichever is later, if the taxpayer omits from a tax return taxes in excess of 25 percent of the taxes reported in the return.

**Subd. 4. Time limit for refunds.** Unless otherwise provided in this chapter, a claim for a refund of an overpayment of tax must be filed within 3-1/2 years from the date prescribed for filing the return (plus any extension of time granted for filing the return, but only if filed within the extended time) or two years from the time the tax is paid, whichever period expires later. Interest on refunds must be computed at the rate specified in section 270.76 from the date of payment to the date the refund is paid or credited. For purposes of this subdivision, the date of payment is the later of the date the tax was finally due or was paid.

**Subd. 5. Bankruptcy; suspension of time.** The time during which a tax must be assessed or collection proceedings begun is suspended during the period from the date of a filing of a petition in bankruptcy until 30 days after either: (1) notice to the commissioner of revenue that the bankruptcy proceedings have been closed or dismissed, or (2) the automatic stay has been ended or has expired, whichever occurs first.

The suspension of the statute of limitations under this section applies to the person the petition in bankruptcy is filed against, and all other persons who may also be wholly or partially liable for the tax.

**Subd. 6. Extension agreement.** If before the expiration of time prescribed in subdivisions 1 and 4 for the assessment of tax or the filing of a claim for refund, both the commissioner of revenue and the taxpayer have consented in writing to the assessment or filing of a claim for refund after that time, the tax may be assessed or the claim for refund filed at any time before the expiration of the agreed upon period. The period

may be extended by later agreements in writing before the expiration of the period previously agreed upon.

**History:** *1Sp1989 c 1 art 13 s 22*

### 349.217 CIVIL PENALTIES.

**Subdivision 1. Penalty for failure to pay tax.** If a tax is not paid within the time specified for payment, a penalty is added to the amount required to be shown as tax. The penalty is three percent of the unpaid tax if the failure is for not more than 30 days, with an additional penalty of three percent of the amount of tax remaining unpaid during each additional 30 days or fraction of 30 days during which the failure continues, not exceeding 24 percent in the aggregate.

If the taxpayer has not filed a return, for purposes of this subdivision the time specified for payment is the final date a return should have been filed.

**Subd. 2. Penalty for failure to make and file return.** If a taxpayer fails to make and file a return within the time prescribed or an extension, a penalty is added to the tax. The penalty is three percent of the amount of tax not paid on or before the date prescribed for payment of the tax if the failure is for not more than 30 days, with an additional five percent of the amount of tax remaining unpaid during each additional 30 days or fraction of 30 days, during which the failure continues, not exceeding 23 percent in the aggregate.

If a taxpayer fails to file a return within 60 days of the date prescribed for filing of the return (determined with regard to any extension of time for filing), the addition to tax under this subdivision must be at least the lesser of: (1) \$200; or (2) the greater of (a) 25 percent of the amount required to be shown as tax on the return without reduction for any payments made or refundable credits allowable against the tax, or (b) \$50.

**Subd. 3. Combined penalties.** When penalties are imposed under subdivisions 1 and 2, except for the minimum penalty under subdivision 2, the penalties imposed under both subdivisions combined must not exceed 38 percent.

**Subd. 4. Penalty for intentional disregard of law or rules.** If part of an additional assessment is due to negligence or intentional disregard of the provisions of this chapter or rules of the commissioner of revenue (but without intent to defraud), there is added to the tax an amount equal to ten percent of the additional assessment.

**Subd. 5. Penalty for false or fraudulent return; evasion.** If a person files a false or fraudulent return, or attempts in any manner to evade or defeat a tax or payment of tax, there is imposed on the person a penalty equal to 50 percent of the tax found due for the period to which the return related, less amounts paid by the person on the basis of the false or fraudulent return.

**Subd. 6. Penalty for sales after revocation, suspension, or expiration.** A distributor who engages in, or whose representative engages in, the offering for sale, sale, transport, delivery, or furnishing of gambling equipment to a person, firm, or organization, after the distributor's license or permit has been revoked or suspended, or has expired, and until such license or permit has been reinstated or renewed, is liable for a penalty of \$1,000 for each day the distributor continues to engage in the activity. This subdivision does not apply to the transport of gambling equipment for the purpose of returning the equipment to a licensed manufacturer.

**Subd. 7. Payment of penalties.** The penalties imposed by this section must be collected and paid in the same manner as taxes.

**Subd. 8. Penalties are additional.** The civil penalties imposed by this section are in addition to the criminal penalties imposed by this chapter.

**Subd. 9. Order payments credited.** All payments received may be credited first to the oldest liability not secured by a judgment or lien in the discretion of the commissioner of revenue, but in all cases must be credited first to penalties, next to interest, and then to the tax due.

**History:** *1Sp1989 c 1 art 13 s 23*

**349.2171 TAX-RELATED CRIMINAL PENALTIES.**

**Subdivision 1. Penalty for failure to file or pay.** (a) A person required to file a return, report, or other document with the commissioner of revenue, who knowingly fails to file it when required, is guilty of a gross misdemeanor. A person required to file a return, report, or other document who willfully attempts to evade or defeat a tax by failing to file it when required is guilty of a felony.

(b) A person required to pay or to collect and remit a tax, who knowingly fails to do so when required, is guilty of a gross misdemeanor. A person required to pay or to collect and remit a tax, who willfully attempts to evade or defeat a tax law by failing to do so when required, is guilty of a felony.

**Subd. 2. False or fraudulent returns; penalties.** (a) A person required to file a return, report, or other document with the commissioner of revenue, who delivers to the commissioner of revenue a return, report, or other document known by the person to be fraudulent or false concerning a material matter, is guilty of a felony.

(b) A person who knowingly aids or assists in, or advises in the preparation or presentation of a return, report, or other document that is fraudulent or false concerning a material matter, whether or not the falsity or fraud committed is with the knowledge or consent of the person authorized or required to present the return, report, or other document, is guilty of a felony.

**Subd. 3. Sales without permit; violations.** (a) A person who engages in the business of selling pull-tabs or tipboards in Minnesota without the licenses or permits required under this chapter, or an officer of a corporation who so engages in the sales, is guilty of a gross misdemeanor.

(b) A person selling gambling equipment in Minnesota after revocation of a license or permit under this chapter, when the commissioner of revenue or the board has not issued a new license or permit, is guilty of a felony.

**Subd. 4. Criminal penalties.** Criminal penalties imposed by this section are in addition to civil penalties imposed by this chapter.

**Subd. 5. Statute of limitations.** Notwithstanding section 628.26, or other provision of the criminal laws of this state, an indictment may be found and filed, or a complaint filed, upon a criminal offense specified in this section, in the proper court within six years after the offense is committed.

**History:** *1Sp1989 c 1 art 13 s 24*

**349.218 INTEREST.**

**Subdivision 1. Interest rate.** When an interest assessment is required under this section, interest is computed at the rate specified in section 270.75.

**Subd. 2. Late payment.** If a tax is not paid within the time specified by law for payment, the unpaid tax bears interest from the date the tax should have been paid until the date the tax is paid.

**Subd. 3. Extensions.** If an extension of time for payment has been granted, interest must be paid from the date the payment should have been made if no extension had been granted, until the date the tax is paid.

**Subd. 4. Additional assessments.** If a taxpayer is liable for additional taxes because of a redetermination by the commissioner of revenue, or for any other reason, the additional taxes bear interest from the time the tax should have been paid, without regard to any extension allowed, until the date the tax is paid.

**Subd. 5. Erroneous refunds.** In the case of an erroneous refund, interest accrues from the date the refund was paid unless the erroneous refund results from a mistake of the department, then no interest or penalty is imposed unless the deficiency assessment is not satisfied within 60 days of the order.

**Subd. 6. Interest on judgments.** Notwithstanding section 549.09, if judgment is entered in favor of the commissioner of revenue with regard to any tax, the judgment bears interest at the rate specified in section 270.75 from the date the judgment is entered until the date of payment.

Subd. 7. **Interest on penalties.** (a) A penalty imposed under section 349.217, subdivision 1, 2, 3, 4, or 5, bears interest from the date the return or payment was required to be filed or paid (including any extensions) to the date of payment of the penalty.

(b) A penalty not included in paragraph (a) bears interest only if it is not paid within ten days from the date of notice. In that case interest is imposed from the date of notice to the date of payment.

**History:** *1Sp1989 c 1 art 13 s 25*

### **349.219 ADMINISTRATIVE REVIEW.**

Subdivision 1. **Taxpayer right to reconsideration.** A taxpayer may obtain reconsideration by the commissioner of revenue of an order assessing tax, a denial of a request for abatement of penalty assessed under section 349.152, subdivision 1, clause (5), or 349.217, or a denial of a claim for refund of money paid to the commissioner of revenue under provisions, assessments, or orders under this chapter by filing an administrative appeal as provided in subdivision 4. A taxpayer cannot obtain reconsideration if the action taken by the commissioner of revenue is the outcome of an administrative appeal.

Subd. 2. **Appeal by taxpayer.** A taxpayer who wishes to seek administrative review must follow the procedure provided by subdivision 4.

Subd. 3. **Notice date.** For purposes of this section the term "notice date" means the date of the order adjusting the tax or order denying a request for abatement, or, in the case of a denied refund, the date of the notice of denial.

Subd. 4. **Time and content for administrative appeal.** Within 60 days after the notice date, the taxpayer must file a written appeal with the commissioner of revenue. The appeal need not be in any particular form but must contain the following information:

- (1) name and address of the taxpayer;
- (2) if a corporation, the state of incorporation of the taxpayer, and the principal place of business of the corporation;
- (3) the Minnesota identification number or social security number of the taxpayer;
- (4) the type of tax involved;
- (5) the date;
- (6) the tax years or periods involved and the amount of tax involved for each year or period;
- (7) the findings in the notice that the taxpayer disputes;
- (8) a summary statement that the taxpayer relies on for each exception; and
- (9) the taxpayer's signature or signature of the taxpayer's duly authorized agent.

Subd. 5. **Extensions.** When requested in writing and within the time allowed for filing an administrative appeal, the commissioner of revenue may extend the time for filing an appeal for a period not to exceed 30 days from the expiration of the 60 days from the notice date.

Subd. 6. **Automatic extension of statute of limitations.** Notwithstanding any statute of limitations to the contrary, when the commissioner of revenue has made a determination and the taxpayer has authority to file an administrative appeal, the period during which the commissioner can make further assessments or other determinations does not expire before:

- (1) 90 days after the notice date if no protest is filed under subdivision 4; or
- (2) 90 days after the commissioner of revenue notifies the taxpayer of the determination on the appeal.

Subd. 7. **Determination of appeal.** On the basis of applicable law and available information, the commissioner of revenue shall determine the validity, if any, in whole or part of the appeal and notify the taxpayer of the decision. This notice must be in writing and contain the basis for the determination.

**Subd. 8. Agreement determining tax liability.** When it appears to be in the best interests of the state, the commissioner of revenue may settle taxes, penalties, or interest that the commissioner has under consideration by virtue of an appeal filed under this section. An agreement must be in writing and signed by the commissioner of revenue and the taxpayer or the taxpayer's representative authorized by the taxpayer to enter into an agreement. An agreement must be filed in the office of the commissioner of revenue.

**Subd. 9. Appeal of an administrative appeal.** Following the determination or settlement of an appeal, the commissioner of revenue must issue an order reflecting that disposition. Except in the case of an agreement determining tax under this section, the order is appealable to the Minnesota tax court under section 271.06.

**Subd. 10. Appeal where no determination.** If the commissioner of revenue does not make a determination within six months of the filing of an administrative appeal, the taxpayer may elect to appeal to tax court.

**Subd. 11. Exemption from administrative procedure act.** This section is not subject to chapter 14.

**History:** *1Sp1989 c 1 art 13 s 26*

### 349.22 PENALTY.

**Subdivision 1. Penalty.** (a) A person who violates any provision of sections 349.11 to 349.23 for which another penalty is not provided is guilty of a misdemeanor.

(b) A person who violates any provision of sections 349.11 to 349.23 for which another penalty is not provided is guilty of a gross misdemeanor if the violation occurs within five years after a previous conviction under any provision of sections 349.11 to 349.23.

(c) 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 the 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.

**Subd. 2. Other action.** This section does not preclude civil or criminal actions under other applicable law or preclude any agency of government from investigating or prosecuting violations of the provisions of sections 349.11 to 349.214. County attorneys and the attorney general have joint responsibility for prosecuting violations of sections 349.11 to 349.214, and the attorney general may prosecute any violation of those sections. If the county attorney fails to initiate the prosecution within 30 days, the attorney general may initiate prosecution.

**Subd. 3.** [Repealed, 1990 c 590 art 2 s 18]

**Subd. 3a. Aggregation.** When the value of prizes or pull-tabs received within a six-month period is aggregated under this section and two or more offenses were committed by the same person in two or more counties, the accused may be prosecuted in any county in which one of the offenses was committed for all of the offenses aggregated under this section.

**Subd. 4. Sales after revocation.** A person selling pull-tabs or tipboards after the person's license or permit has been revoked is guilty of a felony.

**History:** *1976 c 261 s 12; 1984 c 502 art 12 s 20; 1988 c 719 art 9 s 16-18; 1989 c 334 art 2 s 47,48; 1990 c 590 art 2 s 11,12; 1990 c 594 art 1 s 70*

### 349.23 VALIDITY OF PRIOR AGREEMENTS.

Nothing in sections 349.11 to 349.22 shall be construed to affect the validity of any agreement or contract between an organization and any financial or lending institution, entered into prior to August 1, 1976.

**History:** *1976 c 261 s 13*

### 349.26 [Repealed, 1984 c 502 art 12 s 25]



**349.30 DEFINITIONS.**

Subdivision 1. For the purposes of sections 349.30 to 349.39, unless a different meaning is indicated by the context, the words, terms, and phrases defined in this section shall have the meanings given them.

Subd. 2. "Gambling device" has the meaning given it in section 609.75, subdivision 4.

Subd. 3. "Person" means an individual, a copartnership, an association, a corporation, or any other entity or organization.

Subd. 4. "Municipality" means any county, city, or town.

Subd. 5. "License" includes permits of every kind, nature and description issued pursuant to any statute or ordinance for the carrying on of any business, trade, vocation, commercial enterprise or undertaking.

Subd. 6. "Licensee" means any person to whom a license of any kind is issued, but does not include a common carrier transporting, or a public warehouse operator storing, any gambling device for hire, or a manufacturer or distributor of such devices keeping the same only for the purpose of sale or distribution to others or repairing of same.

Subd. 7. "Licensed business" means any business, trade, vocation, commercial enterprise, or undertaking for which a license is issued.

Subd. 8. "Licensed premises" means the place or building, or the room in a building, designated in the license as the place where the licensed business is to be carried on, and all land adjacent thereto and used in connection with and in the operation of a licensed business, and all adjacent or contiguous rooms or buildings operated or used in connection with the buildings where the licensed business is carried on. If no place is described in any license, then "licensed premises" means the building or place where the licensed business is carried on under such license.

Subd. 9. "Issuing authority" and "authority issuing the license" mean and include the officer, board, bureau, department, commission, or agency of the state, or of any of its municipalities, by whom any license is issued and include the councils and governing bodies of all municipalities.

**History:** 1947 c 586 s 1; 1973 c 123 art 5 s 7; 1981 c 204 s 9; 1986 c 444; 1990 c 590 art 1 s 38

**349.31 GAMBLING DEVICE; POSSESSION OF.**

Subdivision 1. **Intentional possession; willful keeping.** The intentional possession or willful keeping of a gambling device on a licensed premises is cause for the suspension or revocation of any license under which the licensed business is carried on upon the premises where the gambling device is found, provided that possession of gambling equipment as defined in section 349.12, subdivision 11, which is used for lawful gambling authorized by this chapter, and the manufacture of gambling devices for use in jurisdictions where use of the gambling device is legal as provided for by section 349.40 shall not be cause for revocation of a license.

Subd. 2. **Suspension and revocation of licenses.** All licenses under which any licensed business is permitted to be carried on upon the licensed premises shall be suspended or revoked if the intentional possession or willful keeping of any such gambling devices upon the licensed premises is established, notwithstanding that it may not be made to appear that such devices have actually been used or operated for the purpose of gambling.

**History:** 1947 c 586 s 2; 1978 c 507 s 1; 1981 c 126 s 1; 1981 c 204 s 10; 1984 c 502 art 12 s 21; 1986 c 467 s 28; 1989 c 334 art 2 s 51; 1990 c 590 art 1 s 39

**349.32 ISSUING AUTHORITY TO SUSPEND OR REVOKE.**

The proceedings for suspension or revocation are held before the issuing authority, which has the power to suspend or revoke the license or licenses involved, as hereinafter provided.

**History:** 1947 c 586 s 3; 1990 c 590 art 1 s 40

**349.33 PEACE OFFICERS TO OBSERVE AND INSPECT PREMISES.**

Every sheriff, deputy sheriff, constable, marshal, police officer, and peace officer shall observe and inspect the premises where occupations are carried on under license and ascertain whether gambling devices are present thereon and immediately report the finding thereof to the authority or authorities issuing the license or licenses applicable to the premises in question.

**History:** 1947 c 586 s 4; 1986 c 444

**349.34 PROCEEDINGS BEFORE ISSUING AUTHORITY; ORDER TO SHOW CAUSE.**

If an issuing authority, on receipt of information from a peace officer described in section 349.33, is of the opinion that cause exists for the suspension or revocation of a license, the authority shall issue an order to show cause directed to the licensee of the premises, stating the ground upon which the proceeding is based and requiring the licensee to appear and show cause at a time and place, within the county in which the licensed premises are located, not less than ten days after the date of the order, why the license should not be suspended or revoked. That order to show cause shall be served upon the licensee in the manner prescribed by law for the service of summons in a civil action, or by certified mail, not less than eight days before the date fixed for the hearing thereof. A copy of the order shall forthwith be mailed to the owner of the premises, as shown by the records in the office of the county recorder, at the owner's last known post office address. A copy of the order shall at the same time be mailed to any other issuing authority, of which the authority issuing the order to show cause has knowledge, by which other license to that licensee may have been issued, and any such other authority may participate in the suspension or revocation proceedings after notifying the licensee and the officer or authority holding the hearing of its intention so to do on or before the date of hearing, and after the hearing take such action as it could have taken had it instituted the suspension or revocation proceedings in the first instance.

**History:** 1947 c 586 s 5; 1976 c 181 s 2; 1978 c 674 s 60; 1986 c 444; 1990 c 590 art 1 s 41

**349.35 REVOCATION OF LICENSE.**

**Subdivision 1. Suspension; revocation; stay; appeal.** If, upon the hearing of the order to show cause, it appears that the licensee intentionally possessed or willfully kept upon the licensed premises any gambling device, then the license or licenses under which the licensed business is operated on the licensed premises, shall be suspended or revoked. The order of suspension or revocation shall not be enforced during the period allowed by section 349.39 for taking an appeal.

**Subd. 2. Limitation as to issuance of new license on premises.** No new license or licenses for the same business upon the same premises shall be issued for the period of one year thereafter, except as hereinafter provided.

**History:** 1947 c 586 s 6; 1986 c 444; 1990 c 590 art 1 s 42

**349.36 DUTIES OF COUNTY ATTORNEY OR ATTORNEY GENERAL.**

The county attorney of the county in which the hearing is held, the city attorney if the issuing authority is the city, or the attorney general shall attend the hearing, interrogate the witnesses, advise the issuing authority, and appear for the issuing authority on any appeal taken pursuant to the provisions of section 349.39.

**History:** 1947 c 586 s 7; 1986 c 444; 1990 c 590 art 1 s 43; 1990 c 594 art 1 s 71

**349.37 WITNESSES.**

The issuing authority may issue subpoenas and compel the attendance of witnesses at any hearing. Witnesses duly subpoenaed and attending any such hearing shall be paid fees and mileage by the issuing authority equal to the fees and mileage paid witnesses in the district court.

**History:** 1947 c 586 s 8

**349.38 PROPERTY OWNERS LIABILITY.**

When a license is suspended or revoked under the provisions of sections 349.30 to 349.39, the owner of the premises upon which any licensed business has been operated shall not be penalized by reason thereof unless it is established that the owner had knowledge of the existence of the gambling devices resulting in license suspension or revocation.

*History: 1947 c 586 s 9; 1986 c 444; 1990 c 590 art 1 s 44*

**349.39 APPEAL TO DISTRICT COURT; STAY; CONTINUANCE UNDER BOND; HEARING UPON ONE YEAR LIMITATION ON PREMISES.**

Any licensee, or any owner of licensed premises, aggrieved by an order of an issuing authority suspending or revoking any license may appeal from that order to the district court of the county in which the licensee resides by serving a notice of the appeal upon the issuing authority or the clerk thereof. The notice of appeal shall state that the person appealing takes an appeal to that district court from the order suspending or revoking the license or licenses, describing them and identifying the order appealed from. This notice shall be served within 15 days from the date of service of the order appealed from, and the same, with proof of service thereof, shall be filed with the court administrator of the district court of the proper county. The appeal shall stand for trial at the next term of the district court following the filing of the notice of appeal, without the service of any notice of trial, and shall be tried in the district court de novo. The trial shall be by jury if the appellant shall so demand. The licensee may continue to operate the licensed business or businesses until the final disposition of such appeal. If the district court upon the appeal shall determine that any license involved in the appeal should be suspended or revoked, it may, nevertheless, in its discretion permit the continuance of the licensed business under a bond in the amount and in the form and containing the conditions prescribed by the court. The district court on the appeal, or in a separate proceeding, may permit the issuance of a new license to a different licensee before the expiration of the period of one year specified in section 349.35, subdivision 2, upon such terms and conditions imposed by the court as will insure that no gambling device shall thereafter be maintained upon the licensed premises.

*History: 1947 c 586 s 10; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1990 c 590 art 1 s 45*

**349.40 GAMBLING DEVICES; MANUFACTURE FOR USE IN OTHER STATES.**

The manufacture in this state of gambling devices, or any component parts thereof, for shipment, sale, and use in jurisdictions where use of the gambling device is legal is allowed notwithstanding the provisions of this chapter, sections 349.31, 609.75, and 609.76, or other laws to the contrary.

*History: 1981 c 126 s 2*

**349.50 DEFINITIONS.**

Subdivision 1. **Terms.** For the purposes of sections 349.50 to 349.60, the terms defined in this section have the meanings given them.

Subd. 2. **Commissioner.** "Commissioner" means the commissioner of public safety.

Subd. 3. **Department.** "Department" means the department of public safety.

Subd. 4. **Distributor.** "Distributor" means a person which manufactures, sells, markets, advertises, or otherwise distributes video games of chance.

Subd. 5. **Location agreement.** "Location agreement" is an agreement between an operator and an owner for the placement of video games of chance for use by the public.

Subd. 6. **Operator.** "Operator" means a person which holds legal title to video games of chance and places them for use by the public pursuant to a location agreement.

Subd. 7. **Owner.** "Owner" means a person operating a business in which video games of chance are placed for use by the public.

**Subd. 8. Video game of chance.** "Video game of chance" means games or devices that simulate games commonly referred to as poker, blackjack, craps, hi-lo, roulette or other common gambling forms, though not offering any type of pecuniary award or gain to players. The term also includes any video game having one or more of the following characteristics:

(1) it is primarily a game of chance, and has no substantial elements of skill involved;

(2) it awards game credits or replays and contains a meter or device which records unplayed credits or replays.

**Subd. 9. Private clubs.** "Private clubs" are clubs holding club on-sale licenses issued under section 340A.404, subdivision 1.

**History:** 1984 c 654 art 3 s 89; 1987 c 384 art 2 s 1; 1990 c 590 art 1 s 46

### 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 or receiving cash instead of game credits or replays on video games of chance in violation of sections 349.502 and 609.76, subdivision 1.

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; 1990 c 590 art 2 s 13

### 349.502 CASH AWARDS PROHIBITED.

**Subdivision 1. Misdemeanor.** A person who receives anything of value other than replays on a video game of chance is guilty of a misdemeanor.

**Subd. 2. [Repealed, 1990 c 590 art 2 s 18]**

**History:** 1989 c 149 s 2; 1990 c 590 art 2 s 14

### 349.51 DISTRIBUTOR AND OPERATOR LICENSES.

**Subdivision 1. License required.** No person shall engage in the business of a distributor or operator of video games of chance at any place of business without first having received a license from the department to engage in that business at that location.

**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 principal 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.

Subd. 3. **Fees.** (a) The annual license fee for a distributor license is \$10,000.

(b) The annual license fee for an operator license is \$2,500.

Subd. 4. **Distributor bond.** An application for a distributor's license must be accompanied by a corporate surety bond issued by a surety licensed to do business in this state, in the sum of \$10,000, conditioned upon the true and faithful compliance by the distributor with all the provisions of the license. The bond required by this subdivision must be kept in full force during the period covered by the license.

Subd. 5. **License issued.** Upon receipt of the application, the bond in proper form, and payment of the license fee required by subdivision 3, the department shall issue a license in form as prescribed by the department to the applicant, unless it determines that the applicant is otherwise unqualified. The license permits the applicant to whom it is issued to engage in business as a distributor or operator at the place of business shown in the application. The department must assign a license number to each person licensed at the time the initial license is issued. The license number must be inscribed upon all licenses issued to that distributor or operator.

**History:** 1984 c 654 art 3 s 90; 1985 c 248 s 53; 1986 c 444; 1989 c 149 s 3

### 349.52 VIDEO GAME OF CHANCE LICENSES.

Subdivision 1. **Requirements.** In addition to a license, an operator must obtain from the commissioner an annual nontransferable license for each video game of chance. The license fee is \$120 per game. The fee must be prorated according to the number of months remaining in the calendar year at the time of the license application.

Subd. 2. **Collection.** At the time a video game of chance is sold to an operator, the distributor must collect the license fee specified in subdivision 1. The distributor must affix to each game a stamp containing the operator's license number. All license fees must be given to the commissioner for distribution under subdivision 3.

Subd. 3. **Video gaming license account.** (a) Fees collected by the commissioner under sections 349.50 to 349.60 must be deposited in the state treasury in the general fund.

(b) The operator shall, by January 31 of each year, certify to the commissioner the number of video games of chance located in each city, and in each county outside of incorporated areas, on December 31 of the previous year. Within 15 days of receiving this certification the commissioner shall pay from the amounts appropriated to the commissioner to each city and county \$30 for each video game of chance located in the city or in the county outside city limits. After making these payments the commissioner shall transfer the unexpended balance in the account to the general fund.

Subd. 4. **Local fees prohibited.** A municipality may not impose a fee or tax of any kind on video games of chance.

Subd. 5. **Local regulation.** A statutory or home rule charter city or county has the authority to adopt more stringent regulations concerning video games of chance, including regulations prohibiting video games of chance within its jurisdiction.

**History:** 1984 c 654 art 3 s 91; 1986 c 444; 1987 c 320 s 3,4; 1990 c 590 art 2 s 15; 1990 c 594 art 3 s 14

**NOTE:** Subdivision 3, as amended by Laws 1990, chapter 594, article 3, section 14, is effective July 1, 1991. See Laws 1990, chapter 594, article 3, section 17.

**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: 1984 c 654 art 3 s 92; 1986 c 444; 1989 c 149 s 4*

**349.54 ACCESS TO GAMES.**

The commissioner and designated representatives must be given access to all video games of chance, whether the games are in the possession of distributors, operators, or owners, upon reasonable notice.

*History: 1984 c 654 art 3 s 93; 1986 c 444*

**349.55 GAME SPECIFICATIONS.**

No payment may be made directly from any game or in connection with the operation of any device. Each game must contain a random character generator, and any internal meter must be nonresettable. A video game of chance may not contain or have attached to it any switch, lever, button, or other device capable of canceling replays or credits in any way other than by playing the game offered by the machine. A video game of chance must be programmed and must operate in such a way that all credits accumulated on a game must automatically cancel within 60 seconds of the completion of a play. No person may cancel replays or credits on a video game of chance in any way other than by playing the game offered by the machine. A video game of chance may not be restarted after cancellation of all accumulated credits except on insertion of a coin.

*History: 1984 c 654 art 3 s 94; 1990 c 590 art 1 s 47*

**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: 1984 c 654 art 3 s 95; 1986 c 444; 1989 c 149 s 5*

**349.57 PLACEMENT LIMITATIONS.**

**Subdivision 1. Numerical.** No more than two video games of chance may be operated in any location.

Subd. 2. **Locations.** Video games of chance may be operated only at licensed on-sale intoxicating liquor establishments and private clubs.

**History:** 1984 c 654 art 3 s 96

### 349.58 PENALTIES.

A violation of any of the provisions of sections 349.50 to 349.57 is punishable as a misdemeanor.

**History:** 1984 c 654 art 3 s 97

### 349.59 CONTRABAND.

Subdivision 1. **Packages declared to be contraband.** The following are declared to be contraband:

(1) all video games of chance which do not have a licensing stamp affixed to them and all containers that contain contraband video games of chance;

(2) all video games of chance to which the commissioner or designated representatives have been denied access for the inspection of contents. In lieu of seizure, the commissioner or designated representatives may seal the game to prevent its use until inspection of contents is permitted;

(3) all video games of chance at a location at which there is no location agreement in force;

(4) all video games of chance illegally brought into the state; and

(5) all video games of chance that do not conform to the game specifications contained in section 349.55.

Subd. 2. **Seizure.** Contraband may be seized by the commissioner or designated representatives or by any sheriff or other police officer, with or without process, and is subject to forfeiture as provided in subdivision 3.

Subd. 3. **Disposition of seized property.** The person who has seized the property must follow the procedure set forth under section 297A.15, subdivision 4. Whenever the commissioner is satisfied that any person from whom property is seized under this section acting in good faith and without intent to evade the tax imposed by those sections, the commissioner shall release the property seized without further legal proceedings.

**History:** 1984 c 654 art 3 s 98; 1986 c 444; 1990 c 590 art 2 s 16

### 349.60 CONSTRUCTION; OTHER ACTIONS.

Subdivision 1. **Construction.** Video games of chance are also governed by sections 349.30 to 349.31 and 609.75 to 609.76.

Subd. 2. **Other actions.** Agencies of government may investigate and prosecute violations of the laws governing video games of chance as well as other laws relating to gambling.

**History:** 1984 c 654 art 3 s 99

### 349.61 REPEAL; TERMINATION OF LICENSES.

Subdivision 1. **Repeal.** Section 299L.03, subdivision 9, and sections 349.50; 349.501; 349.502; 349.51; 349.52; 349.53; 349.54; 349.55; 349.56; 349.57; 349.58; 349.59; and 349.60 are repealed January 1, 1992. All licenses issued under sections 349.51 and 349.52 in effect on that date expire on that date. The commissioner of finance shall on that date transfer all money in the video gaming license account to the general fund.

Subd. 2. **Not to affect certain compacts.** Nothing in subdivision 1 is intended to affect the validity of any compact entered into before or after August 1, 1990, between the state and the governing body of an Indian tribe that governs the conduct of any form of gambling on Indian lands.

**History:** 1990 c 590 art 1 s 48