

## CHAPTER 231

### INSPECTIONS AND APPEALS DEPARTMENT DUTIES AND POWERS, INCLUDING RACING AND GAMING REGULATION

*H.F. 490*

**AN ACT** relating to the department of inspections and appeals, revising provisions governing the structure and allocation of duties within the department, changing the structure for racing and gaming regulation, providing changes in certain statutory requirements relating to bingo and other games and raffles, authorizing the enforcement of agreements or compacts entered into between the state and Indian tribes under the Indian Gaming Regulatory Act, authorizing warrantless searches of excursion gambling boats under certain conditions, revising the responsibilities of the department, and providing other properly related matters.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 10A.101, subsection 3, Code 1989, is amended to read as follows:

3. "Administrators" "Administrator" means the chief administrative law judge, chief inspector, chief investigator, and chief auditor, or the person administering a division of the department.

Sec. 2. Section 10A.104, subsection 2, Code 1989, is amended to read as follows:

2. Employ ~~Appoint~~ the administrators of the divisions within the department and all ~~additional other personnel deemed necessary for the administration of this chapter, except the state public defender, and assistant state public defender, deemed necessary for the administration of this chapter in accordance with chapter 19A~~ defenders, administrator of the racing commission, members of the employment appeal board, and administrator of the state foster care review board. The administrators of the divisions are not exempt from the merit system. All persons appointed and employed in the department are covered by the provisions of chapter 19A, but persons not appointed by the director are exempt from the merit system provisions of chapter 19A.

Sec. 3. Section 10A.104, Code 1989, is amended by adding the following new subsection:  
NEW SUBSECTION. 9. Administer and enforce chapters 10A, 99B, 135B, 135C, 170, 170A, 170B, 170C, and 191A.

Sec. 4. Section 10A.104, Code 1989, is amended by adding the following new subsection:  
NEW SUBSECTION. 10. Enter into and implement agreements or compacts between the state of Iowa and Indian tribes located in the state which are entered into under the authority of the Indian Gaming Regulatory Act (25 U.S.C. § 2701 et seq.). The agreements or compacts shall contain provisions intended to implement the policies and objectives of the Indian Gaming Regulatory Act.

Sec. 5. Section 10A.105, Code 1989, is amended by striking the section and inserting in lieu thereof the following:

10A.105 CONFIDENTIALITY.

1. For the purposes of this section, "governmental entity" includes an administrative division within the department.

2. The confidentiality of all information in the department produced or collected during or as a result of a hearing, appeal, investigation, inspection, audit, or other function performed by the department on behalf of another governmental entity is governed by the law applicable to the records of that governmental entity. The department may provide information to a governmental entity for which it is conducting a hearing, appeal, inspection, audit, investigation, or other function.

3. The state shall maintain records and materials related to an agreement or compact entered into pursuant to the Indian Gaming Regulatory Act (25 U.S.C. § 2701 et seq.), as confidential records if confidentiality is required by the terms of the agreement or compact.

4. The lawful custodian of all records produced or collected during or as a result of any function performed by the department on behalf of another governmental entity is that governmental entity for the purpose of examination and copying pursuant to chapter 22.

5. If information in the possession of the department indicates that a criminal offense may have been committed, the information may be reported to the appropriate criminal justice or regulatory agency.

6. However, this section does not prohibit the department from releasing the minimal amount of information necessary in its judgment to conduct audits, inspections, investigations, appeals, and hearings, and does not prohibit the introduction of the information as evidence at any hearing conducted by the department.

7. The director, administrators, and their designees shall have access to all records deemed by the department to be pertinent to a hearing, appeal, audit, investigation, inspection, or other related function assigned under this chapter.

Sec. 6. Section 10A.106, subsection 5, Code 1989, is amended by striking the subsection.

Sec. 7. Section 10A.106, Code 1989, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The allocation of departmental duties to the divisions of the department in sections 10A.202, 10A.302, 10A.402, and 10A.502 does not prohibit the director from reallocating departmental duties within the department.

Sec. 8. Section 10A.202, subsection 1, paragraph g, Code 1989, is amended to read as follows:

g. Hearings and appeals relative to the ~~licensure or certification of hospitals, hospices, and health care facilities~~ administration of the department of inspections and appeals. Decisions of the division in this area are subject to review by the department of inspections and appeals.

Sec. 9. Section 10A.202, subsection 1, Code 1989, is amended by adding the following new paragraph:

NEW PARAGRAPH. m. Hearings and appeals relative to the administration of the department of revenue and finance. Decisions of the division in this area are subject to review by the department of revenue and finance.

Sec. 10. Section 10A.302, unnumbered paragraph 1, Code 1989, is amended to read as follows:

The administrator shall coordinate the division's conduct of various audits and other activities as otherwise provided for by law, except those conducted by the state auditor's office, including but not limited to the following:

Sec. 11. Section 10A.302, subsection 4, Code 1989, is amended by striking the subsection.

Sec. 12. Section 10A.302, Code 1989, is amended by adding the following new subsections:  
NEW SUBSECTION. 5. Audits relating to the administration and disbursement of funds from games of skill, games of chance, and raffles.

NEW SUBSECTION. 6. Audit reviews of Iowa department of public health contractors.

NEW SUBSECTION. 7. Certification of targeted small businesses.

Sec. 13. Section 99B.1, subsections 6 and 7, Code 1989, are amended to read as follows:

6. "Net receipts" means gross receipts less amounts awarded as prizes and less state and local sales tax paid upon the gross receipts. Reasonable expenses, charges, fees, taxes other than the state and local sales tax, and deductions allowed by the ~~division~~ department shall not exceed thirty percent of net receipts.

7. "Net rent" means the total rental charge minus reasonable expenses, charges, fees, and deductions allowed by the ~~division~~ department.

Sec. 14. Section 99B.1, subsection 16, Code 1989, is amended by striking the subsection and inserting in lieu thereof the following:

16. "Department" means the department of inspections and appeals.

Sec. 15. Section 99B.1, subsection 20, paragraphs a and c, Code 1989, are amended to read as follows:

a. The applicant's financial standing and good reputation are within the standards established by the ~~division~~ department by rule under chapter 17A so as to satisfy the ~~administrator~~ director of the ~~division~~ department that the applicant will comply with this chapter and the rules applicable to operations under it.

c. The applicant has not been convicted of a felony. However, if the applicant's conviction occurred more than five years before the date of the application for a license, and if the applicant's rights of citizenship have been restored by the governor, the ~~administrator~~ director of the ~~division~~ department may determine that the applicant is an eligible applicant.

Sec. 16. Section 99B.2, subsections 2, 4, and 5, Code 1989, are amended to read as follows:

2. A licensee other than one issued a license pursuant to section 99B.3, 99B.6 or 99B.9 shall maintain proper books of account and records showing in addition to any other information required by the ~~division~~ department, gross receipts and the amount of the gross receipts taxes collected or accrued with respect to gambling activities, all expenses, charges, fees and other deductions, and the cash amounts, or the cost to the licensee of goods or other noncash valuables, distributed to participants in the licensed activity. If the licensee is a qualified organization, the amounts dedicated and the date and name and address of each person to whom distributed also shall be kept in the books and records. The books of account and records shall be made available to the ~~division~~ department or a law enforcement agency for inspection at reasonable times, with or without notice. A failure to permit inspection is a serious misdemeanor.

4. A licensee required by subsection 2 to maintain records shall submit quarterly reports to the ~~division~~ department on forms furnished by the ~~division~~ department. These reports shall be due thirty days following the end of each calendar quarter. The reports shall contain a compilation of the information required to be recorded by subsection 2, and shall include all of the transactions occurring during the three-month period for which the report is submitted. Failure to submit the quarterly reports is grounds for revocation of the license. Willful failure to submit quarterly reports is a serious misdemeanor. However, the time for filing of reports may be extended for thirty days if the licensee makes written request to the ~~division~~ department for an extension which request shows good cause for granting the extension. A person who intentionally files a false or fraudulent report or application with the ~~division~~ department commits a fraudulent practice.

5. An organization receiving funds reported as being dedicated by a qualified organization shall maintain proper books of account and records showing both the receipt and the use of the funds. These records shall be made available to the ~~division~~ department or a law enforcement agency for inspection with or without notice at reasonable times. A failure to permit inspection is a serious misdemeanor.

Sec. 17. Section 99B.6, subsection 1, paragraph j, Code 1989, is amended to read as follows:

j. A representative of the ~~division~~ department or a law enforcement agency is immediately admitted, upon request, to the premises with or without advance notice.

Sec. 18. Section 99B.7, subsection 1, paragraph c, unnumbered paragraph 1, Code 1989, is amended to read as follows:

Cash or merchandise prizes may be awarded in the game of bingo and, except as otherwise provided in this paragraph, shall not exceed one hundred dollars. Merchandise prizes may be awarded in the game of bingo, ~~however,~~ but the actual retail value of the prize, or if the prize consists of more than one item, unit or part, the aggregate retail value of all items, units or

parts, shall not exceed one hundred dollars the maximum provided by this paragraph. A jackpot bingo game may be conducted once during any twenty-four hour period in which the prize may begin at not more than three hundred dollars in cash or actual retail value of merchandise prizes and may be increased by not more than one hundred dollars after each day's game bingo occasion. However, the cost of play in a jackpot bingo game shall not be increased and the jackpot shall not amount to more than seven eight hundred fifty dollars in cash or actual retail value of merchandise prizes. A jackpot bingo game is not prohibited by paragraph "h". A bingo occasion shall not last for longer than four consecutive hours. A qualified organization shall not hold more than fourteen bingo occasions per month. Bingo occasions held under a limited license shall not be counted in determining whether a qualified organization has conducted more than fourteen bingo occasions per month, nor shall bingo occasions held under a limited license be limited to four consecutive hours. With the exception of a limited license bingo, no more than three bingo occasions per week shall be held within a structure or building and only one person licensed to conduct games under this section may hold bingo occasions within a structure or building.

Sec. 19. Section 99B.7, subsection 1, paragraphs d and m, Code 1989, are amended to read as follows:

d. Cash prizes shall not be awarded in games other than bingo and raffles. The actual retail value of any merchandise prizes a prize shall not exceed fifty dollars and merchandise prizes shall not be repurchased. If a prize consists of more than one item, unit, or part, the aggregate value of all items, units, or parts shall not exceed fifty dollars. However, one raffle may be conducted per calendar year at which a prize prizes having a combined value not greater than twenty thousand dollars may be awarded. If the prize is merchandise, its value shall be determined by purchase price paid by the organization or donor.

m. The person or organization conducting the game can show to the satisfaction of the division department that the person or organization is eligible for exemption from federal income taxation under either section 501(c)(3), 501(c)(4), 501(c)(5), 501(c)(6), 501(c)(7), 501(c)(8), 501(c)(10) or 501(c)(19) of the Internal Revenue Code, as defined in section 422.3. However, this paragraph does not apply to a political party as defined in section 43.2, to a nonparty political organization that has qualified to place a candidate as its nominee for statewide office pursuant to chapter 44, or to a candidate candidate's committee as defined in section 56.2.

Sec. 20. Section 99B.7, subsection 3, paragraph b, Code 1989, is amended to read as follows:

b. A person or the agent of a person submitting application to conduct games pursuant to this section as a qualified organization shall certify that the receipts of all games, less reasonable expenses, charges, fees, taxes, and deductions allowed by this chapter, either will be distributed as prizes to participants or will be dedicated and distributed to educational, civic, public, charitable, patriotic or religious uses in this state and that the amount dedicated and distributed will equal at least seventy seventy-five percent of the net receipts. "Educational, civic, public, charitable, patriotic, or religious uses" means uses benefiting a society for the prevention of cruelty to animals or animal rescue league, or uses benefiting an indefinite number of persons either by bringing them under the influence of education or religion or relieving them from disease, suffering, or constraint, or by erecting or maintaining public buildings or works, or otherwise lessening the burden of government, or uses benefiting any bona fide nationally chartered fraternal or military veterans' corporation or organization which operates in Iowa a clubroom, post, dining room, or dance hall, but does not include the erection, acquisition, improvement, maintenance, or repair of real, personal or mixed property unless it is used for one or more of the uses stated. "Public uses" specifically includes dedication of net receipts to political parties as defined in section 43.2. "Charitable uses" includes uses benefiting a definite number of persons who are the victims of loss of home or household possessions through explosion, fire, flood, or storm when the loss is uncompensated by insurance, and uses benefiting a definite number of persons suffering from a seriously disabling disease or injury,

causing severe loss of income or incurring extraordinary medical expense when the loss is uncompensated by insurance.

Proceeds given to another charitable organization to satisfy the ~~seventy~~ seventy-five percent dedication requirement shall not be used by the donee to pay any expenses in connection with the conducting of bingo by the donor organization, or for any cause, deed, or activity that would not constitute a valid dedication under this section.

Sec. 21. Section 99B.7, subsection 3, paragraph c, unnumbered paragraph 1, Code 1989, is amended to read as follows:

A qualified organization shall distribute amounts awarded as prizes on the day they are won. A qualified organization shall dedicate and distribute the balance of the net receipts received within a quarter and remaining after deduction of reasonable expenses, charges, fees, taxes, and deductions allowed by this chapter, before the quarterly report required for that quarter under section 99B.2, subsection 4, is due. The amount dedicated and distributed must equal at least seventy-five percent of the net receipts. A person desiring to hold the net receipts for a period longer than permitted under this paragraph shall apply to the ~~division~~ department for special permission and upon good cause shown the ~~division~~ department may grant the request.

Sec. 22. Section 99B.9, subsection 1, paragraph j, Code 1989, is amended to read as follows:  
j. A representative of the ~~division~~ department or a law enforcement agency is immediately admitted, upon request, to the premises with or without advance notice.

Sec. 23. Section 99B.9A, Code 1989, is amended to read as follows:

**99B.9A EXCEPTIONS FOR CERTAIN AREAS.**

The ~~division~~ department may, at its discretion, allow a qualified organization under section 99B.7 to hold a game of bingo in a building where another qualified organization also holds a game of bingo or where the building is adjacent, but not intraconnected, with an establishment holding a liquor license and the building is located in a municipality of a recorded census of less than two thousand people and the municipality is not located adjacent to another municipality.

Sec. 24. Section 99B.10, subsection 1, Code 1989, is amended by striking the subsection and inserting in lieu thereof the following:

1. A prize of merchandise exceeding five dollars in value or cash shall not be awarded for use of the device. However, a mechanical or amusement device may be designed or adapted to award a prize or one or more free games or portions of games without payment of additional consideration by the participant.

Sec. 25. Section 99B.13, unnumbered paragraph 1, Code 1989, is amended to read as follows:  
The ~~division~~ department may adopt, ~~amend and repeal~~ rules pursuant to chapter 17A to carry out the provisions of this chapter. Rules adopted by the ~~administrator of the division~~ department may include but are not limited to the following:

Sec. 26. Section 99B.14, Code 1989, is amended to read as follows:

**99B.14 REVOCATION OF LICENSE.**

The ~~division~~ department shall revoke a license issued pursuant to this chapter if the licensee or an agent of the licensee violates or permits a violation of a provision of this chapter, or a ~~divisional~~ departmental rule adopted pursuant to chapter 17A, or if a cause exists for which the director of the department of ~~inspections and appeals~~ would have been justified in refusing to issue a license, or upon the conviction of a person of a violation of this chapter or a rule adopted under this chapter which occurred on the licensed premises. However, the revocation of one type of gambling license does not require the revocation of a different type of gambling license held by the same licensee.

Revocation proceedings shall be held only after giving notice and an opportunity for hearing to the licensee. Notice shall be given at least ten days in advance of the date set for hearing. If the ~~division~~ department finds cause for revocation, the license shall be revoked for a period not to exceed two years.

Sec. 27. Section 99B.17, Code 1989, is amended to read as follows:

99B.17 GAMBLING ON CREDIT UNLAWFUL.

A person who tenders and a person who receives any promise, agreement, note, bill, bond, contract, mortgage or other security, or any negotiable instrument, as consideration for any wager or bet, whether or not lawfully conducted or engaged in pursuant to this chapter, commits a misdemeanor. ~~This section shall not prohibit the payment by check of~~ However, a participant in a bingo occasion or in a contest lawful under section 99B.11 may make payment by personal check for any entry or participation fee assessed by the sponsor of a the bingo occasion or contest lawful under section 99B.11.

Sec. 28. Section 99B.19, Code 1989, is amended to read as follows:

99B.19 ATTORNEY GENERAL AND COUNTY ATTORNEY.

Upon request of the ~~racing and gaming division~~ of the department of inspections and appeals or the division of criminal investigation of the department of public safety, the attorney general shall institute in the name of the state the proper proceedings against a person charged by either department with violating this chapter, and a county attorney, at the request of the attorney general, shall appear and prosecute an action when brought in the county attorney's county.

Sec. 29. Section 99B.20, Code 1989, is amended to read as follows:

99B.20 DIVISION OF CRIMINAL INVESTIGATION.

The division of criminal investigation of the department of public safety may investigate to determine licensee compliance with the requirements of this chapter. Investigations may be conducted either on the criminal investigation division's own initiative or at the request of the ~~racing and gaming division~~ of the department of inspections and appeals. The criminal investigation division and the ~~racing and gaming division~~ department of inspections and appeals shall cooperate to the maximum extent possible on an investigation.

Sec. 30. Section 99D.5, subsection 1, Code 1989, is amended to read as follows:

1. A state racing commission is created within the department of ~~commerce~~ inspections and appeals consisting of five members who shall be appointed by the governor subject to confirmation by the senate, and who shall serve not to exceed a three-year term at the pleasure of the governor. The term of each member shall begin and end as provided in section 69.19.

Sec. 31. Section 99D.6, Code 1989, is amended to read as follows:

99D.6 CHAIRPERSON — ADMINISTRATOR — EMPLOYEES — DUTIES — BOND.

The commission shall elect in July of each year one of its members chairperson for the succeeding year. The commission shall appoint an administrator of the ~~racing and gaming division of the department of inspections and appeals~~ commission subject to confirmation by the senate. The administrator shall serve a four-year term. The term shall begin and end in the same manner as set forth in section 69.19. A vacancy shall be filled for the unexpired portion of the term in the same manner as a full-term appointment is made. The administrator may hire other assistants and employees as necessary to carry out the ~~division's~~ commission's duties. Some or all of the information required of applicants in section 99D.8A, subsections 1 and 2, may also be required of employees of the ~~division~~ commission if the commission deems it necessary. The administrator shall keep a record of the proceedings of the commission, and preserve the books, records, and documents entrusted to the administrator's care. The commission shall require the administrator to post a bond in a sum it may fix, conditioned upon the faithful performance of the administrator's duties. Subject to the approval of the governor, the commission shall fix the compensation of the administrator within the salary range five as set by the general assembly. The ~~division~~ commission shall have its headquarters in

the city of Des Moines, and shall meet in July of each year and at other times and places as it finds necessary for the discharge of its duties.

Sec. 32. Section 99D.7, subsection 8, Code 1989, is amended to read as follows:

8. To investigate alleged violations of this chapter or the commission rules, orders, or final decisions and to take appropriate disciplinary action against a licensee or a holder of an occupational license for the violation, or institute appropriate legal action for enforcement, or both. Decisions by the commission are final agency actions pursuant to chapter 17A.

Sec. 33. Section 99F.6, subsection 8, as enacted by 1989 Iowa Acts, Senate File 124, section 6, is amended by striking the subsection and inserting in lieu thereof the following:

8. a. The licensee or a holder of an occupational license shall consent to the search, without a warrant, by agents of the division of criminal investigation of the department of public safety or commission employees designated by the secretary of the commission, of the licensee's or holder's person, personal property, and effects, and premises which are located on the excursion gambling boat or adjacent facilities under control of the licensee, in order to inspect or investigate for violations of this chapter or rules adopted by the commission pursuant to this chapter. The department or commission may also obtain administrative search warrants under section 808.14.

b. However, this subsection shall not be construed to permit a warrantless inspection of living quarters or sleeping rooms on the riverboat if all of the following are true:

(1) The licensee has specifically identified those areas which are to be used as living quarters or sleeping rooms in writing to the commission.

(2) Gaming is not permitted in the living quarters or sleeping rooms, and devices, records, or other items relating to the licensee's gaming operations are not stored, kept, or maintained in the living quarters or sleeping rooms.

(3) Alcoholic beverages are not stored, kept, or maintained in the living quarters or sleeping rooms except those legally possessed by the individual occupying the quarters or room.

c. The commission shall adopt rules to enforce this subsection.

Sec. 34. Section 537A.4, unnumbered paragraph 2, Code 1989, is amended to read as follows:

This section does not apply to a contract for the operation of or for the sale or rental of equipment for games of skill or games of chance, if both the contract and the games are in compliance with chapter 99B. This section does not apply to wagering under the pari-mutuel method of wagering authorized by chapter 99D. This section does not apply to the sale, purchase or redemption of a ticket or share in the state lottery in compliance with chapter 99E. This section does not apply to the sale, purchase, or redemption of any ticket or similar gambling device legally purchased in Indian lands within this state.

Sec. 35. Section 10A.701, Code 1989, is repealed.

Approved May 26, 1989

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## CHAPTER 232

### SALES TAX EXEMPTION FOR CONSUMER RENTAL PURCHASE PROPERTY

H.F. 770

**AN ACT** relating to the sales and use tax and providing an exemption from taxation for consumer rental purchases.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 422.45, subsection 18, Code 1989, is amended to read as follows: