

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

1 IN THE SENATE

2

SENATE BILL NO. 429

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to a surety fund fee and the bond
7 for licensure as an operator of a game of chance or
8 contest of skill; creating the charitable gaming
9 surety fund; and providing for an effective date."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. AS 05.15.122(b) is amended to read:

12 (b) The department may issue an operator's license to a natural
13 person, municipality, or qualified organization that

14 (1) applies on the form provided by the department;

15 (2) pays the annual fee of \$500;

16 (3) discloses the identity of persons employed by the
17 applicant in a managerial or supervisory capacity;

18 (4) submits proof of liability insurance satisfactory to
19 the department; and

20 (5) pays a surety fund fee to the department as required
21 under AS 05.15.230 [POSTS A BOND OR SECURITY SATISFACTORY TO THE
22 DEPARTMENT IN THE AMOUNT OF \$25,000 FOR EACH PERMIT UNDER WHICH THE
23 OPERATOR OPERATES UP TO A MAXIMUM OF \$100,000].

24 * Sec. 2. AS 05.15 is amended by adding new sections to read:

25 ARTICLE 4. CHARITABLE GAMING SURETY FUND.

26 Sec. 05.15.220. CHARITABLE GAMING SURETY FUND ESTABLISHED. The
27 charitable gaming surety fund is established as a special account in
28 the general fund.

29 Sec. 05.15.225. MONEY DEPOSITED IN GENERAL FUND. Money received

1 by the department under AS 05.15.220 - 05.15.275 shall be deposited in
2 the charitable gaming surety fund established by AS 05.15.220. The
3 commissioner of administration shall separately account for the money
4 deposited in the charitable gaming surety fund. The annual estimated
5 balance in the account may be used by the legislature to make appro-
6 priations to the department to carry out the purposes of the
7 charitable gaming surety fund, including the cost of investigations
8 and hearings under AS 05.15.220 - 05.15.275.

9 Sec. 05.15.230. SURETY FUND FEE. (a) A distributor, operator,
10 municipality, or qualified organization, when obtaining or renewing a
11 charitable gaming license or permit, shall, subject to (b) of this
12 section, pay to the department, in addition to the license fee or
13 permit fee, a surety fund fee that the department sets by regulation
14 in an amount

15 (1) not to exceed \$250 for municipalities and qualified
16 organizations; and

17 (2) not to exceed \$1,000 for distributors and operators.

18 (b) When the total amount of money in the charitable gaming
19 surety fund reaches \$1,000,000, the department may not require payment
20 of the surety fund fee. When the amount in the fund drops below
21 \$900,000, the department again shall require a surety fund fee as set
22 under (a) of this section.

23 Sec. 05.15.235. CLAIM FOR PAYMENT. (a) Only a permittee hold-
24 ing a valid permit issued under this chapter may seek reimbursement
25 from the charitable gaming surety fund for a loss as described in (b)
26 of this section.

27 (b) A permittee seeking reimbursement for a loss suffered in a
28 transaction as a result of fraud, misrepresentation, deceit, or negli-
29 gence on the part of a distributor or operator licensed under this

1 chapter shall file a claim for reimbursement with the department. The
2 department shall by regulation set the period of time within which a
3 permittee seeking reimbursement must make a claim. The permittee
4 shall make a claim for reimbursement to the department on a form
5 furnished by the department. The form shall be executed under penalty
6 of perjury, and information required to be supplied must include the
7 following:

- 8 (1) the name and address of the permittee;
- 9 (2) the name and address of the distributor or operator;
- 10 (3) the amount of the alleged loss;
- 11 (4) the date or period of time during which the alleged
12 loss occurred;
- 13 (5) the date upon which the alleged loss was discovered;
- 14 and
- 15 (6) a general statement of the facts pertaining to the
16 claim.

17 (c) The claimant shall mail or deliver to the distributor or
18 operator alleged to have committed the conduct resulting in the loss a
19 copy of a claim filed with the department under (b) of this section,
20 within 10 days after filing the claim.

21 (d) A permittee who files a claim under this section shall pay a
22 filing fee to the department at the time the claim is filed. The
23 department shall by regulation set the amount of the filing fee. The
24 filing fee shall be refunded only if

- 25 (1) the department makes an award to the permittee from the
26 charitable gaming surety fund; or
- 27 (2) the claim is withdrawn by the permittee before the
28 department holds a hearing on the claim.

29 Sec. 05.15.240. CONSIDERATION OF CLAIM. (a) In considering a

1 claim for reimbursement, the department may

2 (1) investigate the alleged facts and engage the services of
3 an investigator, accountant, or other expert necessary to process the
4 claim;

5 (2) compel, by subpoena, the attendance of witnesses and
6 the production of books, papers, and documents pertaining to the
7 claim; and

8 (3) administer oaths and affirmations.

9 (b) The department shall conduct a hearing if requested by the
10 claimant or the distributor or operator.

11 (c) A certified or authenticated copy of a record, including a
12 transcript of testimony, of a hearing held under AS 05.15.128 in which
13 fraud, misrepresentation, deceit, or negligence on the part of a
14 distributor or operator is established, constitutes sufficient
15 evidence to support a finding.

16 (d) Before the department awards payment of a claim, the dis-
17 tributor or operator shall be afforded an opportunity to file with the
18 department, within 10 days after receipt of notification of the claim
19 under AS 05.15.235, either a written statement in opposition to the
20 claim or an application for the presentation of additional evidence at
21 a hearing conducted by the department.

22 (e) The permittee bears the burden of proof of establishing that
23 the permittee suffered losses in a transaction as a result of fraud,
24 misrepresentation, deceit, or negligence on the part of a distributor
25 or operator and the extent of those losses. All facts must be estab-
26 lished by a preponderance of the evidence.

27 (f) The department may postpone consideration of a claim until
28 after a hearing under AS 05.15.128 or until after a pending or contem-
29 plated court proceeding is completed.

1 Sec. 05.15.245. FINDINGS AND PAYMENT. At the conclusion of the
2 department's consideration of a claim filed under AS 05.15.235, it
3 shall state in writing its findings and conclusions. If the depart-
4 ment finds that the permittee has suffered a loss in a transaction as
5 a result of fraud, misrepresentation, deceit, or negligence on the
6 part of a distributor or operator, the department may award a
7 permittee reimbursement up to \$100,000.

8 Sec. 05.15.250. HEARING COSTS. Costs incurred by the department
9 for an investigation or a hearing under AS 05.15.240 may not be con-
10 sidered in determining the maximum reimbursement to be awarded under
11 AS 05.15.245 and 05.15.255.

12 Sec. 05.15.255. MAXIMUM AWARD. (a) The maximum award under
13 AS 05.15.245 is \$100,000 for any one distributor or operator.

14 (b) If the \$100,000 limit specified in (a) of this section is
15 insufficient to pay in full the valid claims of all permittees who
16 have filed claims against that distributor or operator, the \$100,000
17 shall be distributed among the permittees in the ratio that their
18 individual claims bear to the aggregate of valid claims, or in another
19 manner that the department considers equitable. Distribution shall be
20 made among the permittees entitled to share in the recovery, without
21 regard to the sequence in which their claims were filed.

22 Sec. 05.15.260. SEQUENCE OF CLAIM PAYMENT. If the money
23 appropriated from the charitable gaming surety fund is insufficient at
24 a given time to satisfy an award, the department shall, when
25 sufficient money has been appropriated, satisfy unpaid claims in the
26 sequence that the claim orders were originally issued, plus
27 accumulated interest at the rate of 10.5 percent a year.

28 Sec. 05.15.265. RIGHT TO SUBROGATION. When the department has
29 paid an award to a permittee, the department is subrogated to all

1 rights of the claimant to the amount paid, and the claimant shall
2 assign to the state all right to that portion of the claim. Amounts
3 subsequently recovered by the department shall be deposited in the
4 charitable gaming surety fund in the general fund.

5 Sec. 05.15.270. DISCIPLINARY ACTION AGAINST DISTRIBUTORS AND
6 OPERATORS. (a) Except as provided in (b) of this section, a distrib-
7 utor's or operator's full repayment of all obligations to the state in
8 connection with a claim under AS 05.15.235 does not affect
9 disciplinary proceedings brought under this chapter.

10 (b) When an award is made, the department shall suspend the
11 license of the distributor or operator. A suspension ordered under
12 this subsection may be lifted if the distributor or operator reaches
13 an agreement with the department and has repaid to the state the
14 amount awarded to the permittee and the costs of investigating and
15 hearing the claim under AS 05.15.240.

16 Sec. 05.15.275. SURETY FUND REGULATIONS. The department may
17 adopt regulations under the Administrative Procedure Act (AS 44.62)
18 necessary to carry out the purposes of AS 05.15.220 - 05.15.275.

19 * Sec. 3. AS 05.15.167 is repealed.

20 * Sec. 4. Sections 1 and 2 of this Act take effect immediately under
21 AS 01.10.070(c).

22 * Sec. 5. Section 3 of this Act takes effect July 1, 1990.