

BEFORE THE STATE LOTTERY AND SPORTS WAGERING COMMISSION
DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW)	NOTICE OF ADOPTION,
RULES I through IV pertaining to sports)	AMENDMENT, AND REPEAL
wagering accounts, self-exclusion,)	
responsible gaming and age verification,)	
the amendment of ARM 2.63.203,)	
2.63.204, 2.63.401, 2.63.402, 2.63.403,)	
2.63.404, 2.63.405, 2.63.406, 2.63.407,)	
2.63.603, 2.63.604, 2.63.606, 2.63.609,)	
2.63.611, 2.63.612, 2.63.801, 2.63.1002,)	
2.63.1004, 2.63.1005, 2.63.1201, and)	
2.63.1202 pertaining to general)	
provisions, place of sale, licensing, fees,)	
electronic fund transfers, accounting,)	
retailer commission, notices,)	
investigative cooperation, prizes and)	
redemptions to implement sports)	
wagering, and the repeal of ARM)	
2.63.409 pertaining to forms of payment)	

TO: All Concerned Persons

1. On October 4, 2019, the State Lottery and Sports Wagering Commission published MAR Notice No. 2-63-580 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 1685 of the 2019 Montana Administrative Register, Issue Number 19.

2. The commission has thoroughly considered the comments and testimony received. A summary of the comments received, and the commission's responses are:

General Comments:

Comment #1: Several individuals expressed the wish to be able to place wagers electronically at Montana Lottery terminals across the state.

Response #1: A player will be able to place wagers electronically through a mobile device and Montana Lottery sports wagering terminals located at licensed locations.

Comment #2: A commenter wanted to ensure persons could play fantasy sports online through DraftKings and FanDuel.

Response #2: This comment is beyond the scope of this rulemaking. Currently, both DraftKings and FanDuel are illegal in Montana. These are internet-based fantasy sports leagues, and under 23-5-802, MCA, it is unlawful to wager on a fantasy sports league by using the internet.

Comment #3: Multiple commenters encouraged the commission to proceed with the rulemaking proposal and to adopt rules implementing sports wagering as soon as possible. One commenter specifically suggested it is better to regulate and allow legal sports wagering, because it reduces incentives to engage in illegal gambling and the revenue would benefit the state.

Response #3: The commission appreciates all comments received. The commission recognizes the benefits of regulated sports wagering under 2019 HB 725 (Chapter 284, Laws of 2019) but must proceed carefully to ensure all procedural and substantive requirements are met.

Comment #4: One commenter opposed the lottery managing sports wagering.

Response #4: The commission acknowledges the comment; however, it is beyond the scope of this rulemaking. The 2019 Legislature enacted HB 725, which made the lottery responsible for sports wagering.

Comment #5: The commission received a comment suggesting that Chapter 284, section 1, L. 2019 (codified at 23-7-104, MCA) be removed from implementation citations for rules adopted and amended as a result of this proposal, because it only provides that sports wagering is lawful when conducted in accordance with Title 23, chapter 7, MCA, and the commission's rules. The commenter noted the statute is not directly implemented by the new rules and amendments as indicated in the proposal.

Response #5: The commission agrees and has removed the citation from the adopted and amended rules accordingly.

Comments #6 and #7 relate to New Rule I (ARM 2.63.1301):

Comment #6: One commenter asked how a person could make an "anonymous wager" at a sports wagering facility as described in proposed New Rule I(2) if the person was also required to verify that he or she was eligible to participate in sports wagering.

Response #6: The commission acknowledges use of the word "anonymous" in this context could create confusion because a player participating in sports wagering without a sports wagering account will be required to verify eligibility. This will require the player to provide identifying information. The commission has revised New Rule I(2) to describe the means of wagering without a sports wagering account and deleted the word "anonymous" to avoid suggesting players will not be

required to provide identifying information to a sales agent to confirm that the player is of legal age to place a wager.

Comment #7: The commission received a comment suggesting that 23-7-102, MCA, be removed from implementation citations for New Rule I.

Response #7: The commission agrees and has removed the citation.

Comment #8 relates to New Rule IV (ARM 2.63.410):

Comment #8: The commission received a comment suggesting that 23-7-301, MCA, be listed as a statute implemented by New Rule IV.

Response #8: The commission agrees and has added the citation.

Comment #9 relates to ARM 2.63.203:

Comment #9: The commission received a comment suggesting that 23-7-302, MCA, be listed as a statute implemented by ARM 2.63.203.

Response #9: The commission agrees and has added the citation.

Comments #10 through #12 relate to ARM 2.63.204:

Comment #10: Several individuals commented regarding the type of wagers that should be offered. Some requested specific wager types while others noted the absence of definition in rule.

Response #10: The commission will determine the type of wagers permitted when setting parameters for sports wagering games as described in ARM 2.63.204. Both proposition and spread wagers were mentioned in the comments and will be considered. Game parameters are exempt from the administrative rule process under 2-4-102, MCA. This allows the lottery to adjust the type of games and wagers offered in response to the wishes of the public.

Comment #11: A commenter noted game parameters under 2-4-102, MCA, must be adopted by the lottery commission rather than the lottery director.

Response #11: The commission agrees with the comment and has amended ARM 2.63.204(6) to replace "director" with "commission."

Comment #12: A commenter suggested the lottery commission should not use its authority to adopt parameters relating to specific lottery games under 2-4-102, MCA, to create rules of general application regarding subjects that must be addressed in rule as provided in 23-7-202(10), MCA. These subjects include "acceptance of wagers on a sports event or a series of sports events," "player exclusion requirements," and "protections for an individual placing a wager."

Response #12: The commission agrees with the comment.

Comments #13 through #17 relate to ARM 2.63.401:

Comment #13: A commenter expressed concern that "gaming supplier" is not defined.

Response #13: Gaming supplier is described in 23-7-310, MCA, as "a person, firm, association, or corporation that submits a bid or proposal for a contract to supply the lottery of sports wagering equipment, tickets, or other material, or consultant services for use in the operation of the state lottery."

Comment #14: Numerous commenters supported implementing a requirement for sports wagering sales agents to hold an alcoholic beverage license as proposed in ARM 2.63.401(2)(c). Some commenters indicated that the 2019 legislature intended for sports wagering to be limited to locations that hold licenses to serve alcohol. Other commenters noted that gambling operators that are licensed to serve alcohol are already familiar with gaming.

Response #14: The commission appreciates all comments received during the rulemaking process.

Comment #15: A minority of commenters opposed the alcoholic beverage license prerequisite in ARM 2.63.401(2)(c).

One commenter expressed a concern that limiting sports wagering to locations with alcoholic beverage licenses would result in riskier wagers by intoxicated players. In addition, the commenter presumed that some sports wagering players who do not drink alcoholic beverages would not want to be limited to placing wagers in locations that serve alcohol.

Two commenters argued the lottery cannot impose a beverage license limitation because the limitation was not envisioned by the legislature.

Response #15: The lottery acknowledges the concern about intoxicated players; however, because the legislature allowed players to participate in sports wagering at gambling operator locations that serve alcoholic beverages, there is no practical way to prevent players from participating in sports wagering when intoxicated.

The commission disagrees with the commenters who believe the beverage license requirement is not consistent with legislative intent. Under 23-7-301(2), MCA, the legislature granted the lottery authority to determine the places at which state lottery games and sports wagering tickets may be sold. The lottery is authorized to adopt rules relating to "sales agent licensing requirements" (23-7-202, MCA). The legislature required the lottery to consider "financial responsibility and security," "accessibility," and "sufficiency of existing licenses to serve the public convenience and the volume of expected sales." Based on these statutory standards in 23-7-301(3)(a), MCA, the lottery determined that requiring an alcoholic

beverage license would satisfy the lottery's statutory duties in a manner consistent with legislative intent. The lottery can leverage the established liquor licensing process to accomplish its statutory mandates in 23-7-301(3)(a), MCA.

Section 23-7-103(10), MCA, also requires that a sports wagering facility must have a gambling operator's license; however, requiring a gambling operator's license alone will not ensure compliance with the statutory requirements in 23-7-301(3)(a), MCA. The gambling operator license, which more broadly includes licenses to operate Calcutta pools, bingo parlors, and casino nights, does not include limits on the geographic distribution of such establishments. The beverage license requirement in ARM 2.63.401(2)(d) addresses the geographic distribution requirement in 23-7-301(3)(a)(iii), MCA, because alcoholic beverage licenses are limited under a quota system (16-4-201, MCA) and other geographic dispersal requirements (e.g., 16-4-105, MCA). Without such limits, relying solely on the gambling operator license would not satisfy legislative intent.

Comment #16: A commenter advised deleting the unique address requirement in ARM 2.63.401(2)(d), because it duplicates the unique address requirement for a gambling operator license in 23-5-117(2)(b), MCA.

Response #16: The commission agrees and has deleted ARM 2.63.401(2)(d).

Comment #17: The commission received a comment suggesting that 23-7-103, MCA, be listed as a statute implemented by ARM 2.63.401.

Response #17: The commission agrees and has added the citation.

Comment #18 relates to ARM 2.63.403:

Comment #18: A commenter expressed concern about paying a \$50 application fee to engage in sports wagering.

Response #18: The commenter was apparently mistaken. The application fee only applies to locations that want to be licensed as sales agents to offer sports wagering. There is no application fee associated with placing a wager by a player.

Comment #19 relates to ARM 2.63.407:

Comment #19: Some commenters requested clarification regarding the 6% commission for sports wagering sales agents. One commenter asked the commission to clarify whether \$10,000 in sports wagers made at a sports wagering facility would result in a \$600 commission for the licensed sales agent.

Response #19: Under ARM 2.63.407, "sales agents who offer sports wagers are entitled to a 6 percent base commission of the value of sports wagers made." If a location has \$10,000 in sports wagering sales for the month, the sales agent would be entitled to \$600.

Comments #20 through #22 relate to ARM 2.63.603:

Comment #20: A commenter noted the signage requirements in ARM 2.63.603 do not address sports wagering by coaches, referees, and players. The commenter appeared to believe coaches, referees, and players were prohibited from participating in sports wagering under 23-7-301, MCA.

Response #20: Section 23-7-301, MCA, addresses the licensing of sales agents. Under the statute, coaches, referees, and players who are participating in collegiate or professional sports may not become licensed as sales agents. The statute does not address sports wagering by coaches, referees, and players. Because 23-7-301, MCA, pertains to sales agent licensing and not sports wagering, it would be inappropriate for the commission to implement the notice requirement requested by the commenter.

Comment #21: Regarding ARM 2.63.603(3)(b)'s requirement for sales agents to post information about responsible gambling resources approved by the director, a commenter questioned whether the resources approved by the director would be merely informational or formal programs and activities created by the lottery. The commenter observed that rules for "contribution and participation in responsible gaming and consumer protection activities" would require authorization by the lottery commission as provided in 23-7-202(10)(i), MCA. Merely informational materials, however, could be approved by the lottery director.

Response #21: ARM 2.63.603(3)(b) is intended to describe the lottery director's role in approving the information that must be posted concerning responsible gaming and consumer protection activities. The commission acknowledges its duty under 23-7-202(10)(i), MCA, to adopt rules relating to contribution and participation in responsible gaming and consumer protection activities. The commission, not the lottery director, will authorize these activities and programs as required by the statute.

Comment #22: The commission received a comment suggesting that 23-7-202, MCA, be listed as an authority statute for ARM 2.63.603.

Response #22: The commission agrees and has added the citation.

Comments #23 through #25 relate to ARM 2.63.1201:

Comment #23: A commenter recommended using the term "individual" rather than "person" to refer to a natural person in ARM 2.63.1201(3) to avoid creating confusion with respect to who can redeem a winning ticket.

Response #23: The department agrees and has amended ARM 2.63.1201(3) to use the word "individual" when referring to a natural person. A winning lottery

ticket may be redeemed only by an organization with a federal employer's identification number or by a natural person.

Comment #24: The commission received a comment suggesting that 23-7-311, MCA, be listed as an authority statute for ARM 2.63.1201.

Response #24: The commission agrees and has added the citation.

Comment #25: The commission received a comment suggesting that 23-7-108, MCA, be listed as a statute implemented by ARM 2.63.1201.

Response #25: The commission agrees and has added the citation.

3. The department has amended the following rules as proposed: ARM 2.63.1002 and 2.63.1005.

4. The department has repealed the following rule as proposed: ARM 2.63.409.

5. The department has adopted the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (ARM 2.63.1301) SPORTS WAGERING ACCOUNTS

(1) remains as proposed.

(2) The lottery may accept ~~anonymous~~ wagers at a sports wagering facility through a sports wagering terminal without the player establishing a sports wagering account.

(3) through (14) remain as proposed.

AUTH: 23-7-202, MCA

IMP: ~~23-7-102, 23-7-103, 23-7-110, 23-7-202, MCA; Chapter 284, section 1, L. 2019~~

NEW RULE II (ARM 2.63.1304) SELF-EXCLUSION PROGRAM (1) through (5) remain as proposed; however, the implementation citation is amended as follows:

IMP: 23-7-202, MCA; ~~Chapter 284, section 1, L. 2019~~

NEW RULE III (ARM 2.63.1305) RESPONSIBLE GAMING (1) through (5) remain as proposed; however, the implementation citation is amended as follows:

IMP: 23-7-202, MCA; ~~Chapter 284, section 1, L. 2019~~

NEW RULE IV (ARM 2.63.410) AGE VERIFICATION (1) through (3) remain as proposed; however, the implementation citation is amended as follows:

IMP: 23-7-202, 23-7-301, 23-7-302, MCA; ~~Chapter 284, section 1, L. 2019~~

6. The department has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

2.63.203 DEFINITIONS (1) through (8) remain as proposed; however, the implementation citation is amended as follows:

IMP: 23-7-301, 23-7-302, MCA; ~~Chapter 284, section 1, L. 2019~~

2.63.204 GENERAL PROVISIONS (1) through (5) remain as proposed.

(6) The ~~director~~ commission shall adopt parameters for sports wagering games, including but not limited to:

(a) through (k) remain as proposed.

(7) remains as proposed.

AUTH: 23-7-202, MCA

IMP: 23-7-110, 23-7-202, 23-7-211, 23-7-212, 23-7-301, MCA; ~~Chapter 284, section 1, L. 2019~~

2.63.401 SALES AGENT PLACES OF SALE (1) through (2)(c) remain as proposed.

~~(d) that has a unique address assigned by the local government in which the premises is located;~~

(e) through (j) remain as proposed but are renumbered (d) through (i).

AUTH: 23-7-202, 23-7-301, MCA

IMP: 23-7-103, 23-7-301, 23-7-306, 23-7-307, MCA; ~~Chapter 284, section 1, L. 2019~~

2.63.402 SALES AGENT RESIDENCY (1) remains as proposed; however, the implementation citation is amended as follows:

IMP: 23-7-301, MCA; ~~Chapter 284, section 1, L. 2019.~~

2.63.403 SALES AGENT APPLICATIONS AND FEES (1) through (3) remain as proposed; however, the implementation citation is amended as follows:

IMP: 23-7-202, 23-7-301, MCA; ~~Chapter 284, section 1, L. 2019~~

2.63.404 SALES AGENT REQUIRED RULE READING (1) remains as proposed; however, the implementation citation is amended as follows:

IMP: 23-7-202, 23-7-301, MCA; ~~Chapter 284, section 1, L. 2019~~

2.63.405 SALES AGENT ELECTRONIC FUNDS TRANSFER AND ACCOUNTING (1) through (3) remain as proposed; however, the implementation citation is amended as follows:

IMP: 23-7-301, MCA; ~~Chapter 284, section 1, L. 2019~~

2.63.406 SALES AGENT BONDING (1) through (2) remain as proposed; however, the implementation citation is amended as follows:

IMP: 23-7-301, MCA; ~~Chapter 284, section 1, L. 2019~~

2.63.407 SALES AGENT COMMISSION (1) through (6) remain as proposed; however, the implementation citation is amended as follows:

IMP: 23-7-202, 23-7-301, MCA; ~~Chapter 284, section 1, L. 2019~~

2.63.603 DISPLAY OF LICENSE, NOTICES, AND RESTRICTIONS (1) through (3) remain as proposed; however, the authority and implementation citations are amended as follows:

AUTH: 23-7-202, 23-7-301, MCA

IMP: 23-7-301, 23-7-302, MCA; ~~Chapter 284, section 1, L. 2019~~

2.63.604 LICENSE LOCATIONS (1) through (4) remain as proposed; however, the implementation citation is amended as follows:

IMP: 23-7-301, MCA; ~~Chapter 284, section 1, L. 2019~~

2.63.606 DUPLICATE LICENSES (1) through (5) remain as proposed; however, the implementation citation is amended as follows:

IMP: 23-7-211, 23-7-301, MCA; ~~Chapter 284, section 1, L. 2019~~

2.63.609 CHANGE OF LOCATION (1) and (2) remain as proposed; however, the implementation citation is amended as follows:

IMP: 23-7-301, MCA; ~~Chapter 284, section 1, L. 2019~~

2.63.611 REVOCATION OR SUSPENSION OF LICENSE (1) through (5) remain as proposed; however, the implementation citation is amended as follows:

IMP: 23-7-301, MCA; ~~Chapter 284, section 1, L. 2019~~

2.63.612 TEMPORARY LICENSES (1) through (2) remain as proposed; however, the implementation citation is amended as follows:

IMP: 23-7-301, MCA; ~~Chapter 284, section 1, L. 2019~~

2.63.801 ELECTRONIC FUNDS TRANSFER (1) through (5) remain as proposed; however, the implementation citation is amended as follows:

IMP: 23-7-301, MCA; ~~Chapter 284, section 1, L. 2019~~

2.63.1004 LOTTERY TICKETS - SALES AGENT (1) remains as proposed; however, the implementation citation is amended as follows:

IMP: 23-7-202, 23-7-301, MCA; ~~Chapter 284, section 1, L. 2019~~

2.63.1201 PRIZES (1) through (2) remain as proposed.

(3) A winning lottery or sports wager ticket may be redeemed only by an organization with a federal employer's identification number or by ~~a person~~ an individual.

(4) through (15) remain as proposed.

AUTH: 23-7-202, 23-7-311, MCA

IMP: 23-7-108, 23-7-202, 23-7-211, MCA; ~~Chapter 284, section 1, L. 2019~~

2.63.1202 LOTTERY TICKET WINNER REDEMPTIONS (1) remains as proposed; however, the implementation citation is amended as follows:

IMP: 23-7-202, MCA; ~~Chapter 284, section 1, L. 2019~~

By: /s/ Wilbur Rehmann
Wilbur Rehmann, Chair
Montana Lottery Commission

By: /s/ Don Harris
Don Harris, Rule Reviewer
Department of Administration

Certified to the Secretary of State November 26, 2019.