

BEFORE THE MONTANA LOTTERY COMMISSION
DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF PUBLIC HEARING ON
2.63.201, 2.63.203, 2.63.407, 2.63.607,) PROPOSED AMENDMENT AND
and 2.63.1201 and the repeal of ARM) REPEAL
2.63.601, 2.63.602, 2.63.608, 2.63.613,)
and 2.63.1001 pertaining to procedural)
rules, definitions, retailer commissions,)
business changes, prizes, license)
requirements and endorsements, and)
sale of scratch tickets)

TO: All Concerned Persons

1. On April 18, 2014, at 9:00 a.m., the Montana Lottery Commission (commission) will hold a public hearing in the Conference Room of the Montana Lottery, at 2525 North Montana Avenue, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please contact the commission no later than 5:00 p.m. on April 11, 2014, to advise us of the nature of the accommodation that you need. Please contact Denise Blankenship, Montana Lottery, 2525 North Montana Avenue, P.O. Box 200544, Helena, Montana 59601; telephone (406) 444-5801; fax (406) 444-5830; TDD/Montana Relay Service (406) 444-9642; or by e-mail at dblankenship@mt.gov.

3. This notice reflects rule changes proposed by the commission in MAR Notice No. 2-63-503 published on December 26, 2013, at page 2358 of the 2013 Montana Administrative Register, Issue Number 24. Because requests were made for a hearing, and conversations with the Legislative Services Division resulted in changes to the original proposal, the commission is restarting the rulemaking process. The commission has no intention of instituting Internet gambling and none of the proposed changes in this notice are intended to effect such a change.

4. The rules proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

2.63.201 PROCEDURAL RULES (1) The commission adopts and incorporates by reference ~~rules 1 through 28 of the Attorney General's Model Procedural Rules found in ARM 1.3.102 through 1.3.210, except for the Attorney General's sample rule notice forms.~~ A copy of these rules may be obtained by contacting the Attorney General's Office, Justice Building, 215 North Sanders, P.O.

Box 201401, Helena, MT 59620-1401, telephone (406) 444-2026. the following model rules, which may be found at <http://sos.mt.gov/>:

(a) the Attorney General's model procedural rules ARM 1.3.201, 1.3.202, 1.3.211 through 1.3.224, and 1.3.226 through 1.3.233, including the appendix of sample forms in effect March 3, 2014. These rules provide model rules of practice for contested case hearings and declaratory rulings; and

(b) the Secretary of State's model rules ARM 1.3.101, 1.3.102, 1.3.301, 1.3.302, 1.3.304, 1.3.305, 1.3.307 through 1.3.309, and 1.3.311 through 1.3.313 in effect March 3, 2014. These rules define model requirements for rulemaking under the Montana Administrative Procedure Act.

AUTH: 2-4-201, 23-7-202, MCA

IMP: 2-4-201, 23-7-101, 23-7-102, 23-7-103, 23-7-110, MCA

STATEMENT OF REASONABLE NECESSITY: The commission is proposing to amend the above-stated rule to reflect recent updates to the Attorney General's and Secretary of State's Model Rules so that the current model rules are reflected in the rule. As an alternative, the commission could have crafted its own updates to the model rules. However, since the commission already follows the model rules, the commission believes it makes sense to adopt the Attorney General's and Secretary of State's updates. The commission proposes to add 2-4-201, MCA, to the citation of authority because it is this section that requires agencies to adopt rules describing agency organization and procedures. The commission proposes deleting 23-7-101, 23-7-102, 23-7-103, and 23-7-110, MCA, from the listed implemented citations because these citations do not apply to the commission's organization and procedural rules.

2.63.203 DEFINITIONS In addition to the definitions found in 32-7-103, MCA, the following definitions apply to this chapter:

(1) remains the same.

~~(2) "Commission" means the State Lottery Commission created by 23-7-201, MCA.~~

~~(3) "Director" means the director of the Montana State Lottery appointed by the governor under 23-7-210, MCA.~~

~~(4) "Endorsement" means the seal attached to the license which authorizes a retailer to sell lottery on-line tickets at a fixed place of business.~~

(5) remains the same, but is renumbered (2).

~~(6) "Lottery" means the Montana State Lottery created by Ch. 669, L. 1985.~~

(7) through (9) remain the same, but are renumbered (3) through (5).

~~(10)(6) "Terminal-issued game ticket" means a lottery ticket printed by a lottery terminal connected to a computer.~~

(11)(7) "Ticket" means a lottery scratch ticket that has a removable coating covering symbols that determine the amount of prize a player can win a ticket or other tangible evidence of participation used in lottery games authorized by law.

AUTH: 23-7-202, MCA

IMP: 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: Section 2-4-305(2), MCA, states that rules may not unnecessarily repeat statutory language. The commission proposes deletion of (2) through (4) and (6) because they add nothing substantive to the statutory language.

The marketplace and procedures adopted for the sale of lottery products have changed since the original draft of the rule. These rules were adopted when scratch tickets were the predominant tickets that retailers sold. Now, retailers sell a variety of tickets beyond scratch tickets. Specifically, an endorsement applied to "scratch only" retailers. Since such retailers no longer exist, the lottery does not require an endorsement. The proposed amendments to "terminal-issued ticket" are needed to remove outdated language, i.e., terminals are no longer connected to a computer, and to match the text used in ARM 2.63.204. Finally, the commission proposes amending the definition of "ticket" to reflect that retailers now sell more than just scratch tickets. In sum, keeping the current definitions would inaccurately portray how retailers sell lottery tickets to the public.

2.63.407 RETAILER COMMISSION (1) ~~Each retailer is entitled to a base commission of 5% of the face value of scratch tickets activated and not returned. Retailers who sell terminal-issued tickets are entitled to a 5 percent base commission of the face value of terminal-issued tickets printed sold. However, to further the sale of lottery products, the lottery commission may adopt rules providing additional commissions to sales agents based on incremental sales.~~

(a) through (e) remain the same.

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

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

STATEMENT OF REASONABLE NECESSITY: The commission proposes clarifying that retailers will receive a minimum of a 5 percent base commission. This change will give the retailers assurance that they will receive at least a 5 percent commission, but will also give the lottery additional flexibility in developing programs to promote sales of lottery tickets. Section 23-7-301(10), MCA, provides that sales agents are entitled to a commission of no more than 10 percent of the face value of tickets. The commission believes that flexibility is needed in determining the commission amount. For example, to promote the sale of higher-priced tickets, it may be appropriate to pay a higher commission for these tickets than lower-priced tickets. In some cases, it may also be appropriate to pay a 10 percent commission for the sale of high-value tickets.

Section 2-4-305(2), MCA, states that rules may not unnecessarily repeat statutory language. The commission proposes deletion of the first and third sentences because they add nothing substantive to the statutory language.

2.63.607 BUSINESS CHANGES (1) A licensee ~~must~~ shall notify the director of any of the following changes in the licensed business:

(a) through (f) remain the same.

(2) Pursuant to the licensee's contract, a licensee shall notify the director of any change, move, or removal of lottery terminal, equipment, and/or peripherals.

AUTH: 23-7-202, MCA

IMP: 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: The purpose of this proposed change is to alert the lottery to the specified changes so that the lottery may help the retailer avoid problems in the future.

History has shown that misplacement of lottery equipment can have a significant negative effect on a retailer's sales. Moving a terminal from a visible location to a location with minimal access for customers will decrease sales and commissions for lottery retailers. Also, removal, moving, and reinstallation of equipment by someone other than a qualified system vendor may cause damage and significant delays to the retailer's sales. The proposed change from "must" to "shall" is consistent with legislative drafting convention.

2.63.1201 PRIZES (1) through (4) remain the same.

(5) The lottery may deny a claim for a winning ~~scratch or terminal issued~~ ticket if the ticket:

(a) ~~the ticket~~ was not legally issued;

(b) ~~the ticket~~ was stolen;

(c) ~~the ticket~~ is altered, or forged, or so mutilated that its authenticity cannot reasonably be determined.

(6) through (13) remain the same.

(14) An owner or employee of a licensed lottery retailer shall identify themselves as such to lottery officials when claiming a prize. This information must be recorded on the claim form presented to the lottery.

AUTH: 23-7-202, MCA

IMP: 23-7-202, 23-7-211, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed changes to (5) clarify that a claim for any type of ticket may be denied if fraudulently obtained or significantly damaged. The proposed addition of (14) will satisfy the 2012 Montana Lottery Security Audit finding and provide justification for requesting employment information from a claimant. The finding requires retailer owners and employees to identify themselves as such when making a claim as an added security measure. This is currently done in other states, and the auditors thought it was appropriate for the Montana lottery to do the same. The commission agrees with the auditors' recommendation.

5. The commission proposes to repeal the following rules:

2.63.601 LICENSE APPLICATION FEE, found on ARM page 2-6525.

AUTH: 23-7-202, MCA

IMP: 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: Section 2-4-305(2), MCA, states that rules may not unnecessarily repeat statutory language. The commission proposes deletion of this rule because it adds nothing substantive to the statutory language.

2.63.602 PROVISIONAL LICENSE, found on ARM page 2-6525.

AUTH: 23-7-202, 23-7-211, MCA

IMP: 23-7-211, 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: Section 2-4-305(2), MCA, states that rules may not unnecessarily repeat statutory language. The commission proposes deletion of this rule because it adds nothing substantive to the statutory language.

2.63.608 ASSIGNMENT OR TRANSFER OF LICENSE PROHIBITED, found on ARM page 2-6526.

AUTH: 23-7-202, MCA

IMP: 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: Section 2-4-305(2), MCA, states that rules may not unnecessarily repeat statutory language. The commission proposes deletion of this rule because it adds nothing substantive to the statutory language.

2.63.613 ENDORSEMENT, found on ARM page 2-6528.

AUTH: 23-7-202, MCA

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

STATEMENT OF REASONABLE NECESSITY: As noted in the reasonable necessity statement for ARM 2.63.203, the endorsement requirement applied when retailers sold only scratch tickets. The commission no longer requires an endorsement because "scratch only" retailers no longer exist.

2.63.1001 SALE OF SCRATCH TICKETS, found on ARM page 2-6541.

AUTH: 23-7-202, MCA

IMP: 23-7-202, MCA

STATEMENT OF REASONABLE NECESSITY: This rule applied when the lottery had "scratch only" retailers. As explained, this is no longer the case.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to John Tarr, Security Director for the Montana Lottery at 2525 North Montana Avenue, Helena, Montana 59601; telephone (406) 444-5804; fax (406) 444-5830; or by e-mail to JTarr@mt.gov, and must be received no later than 5:00 p.m. on April 24, 2014.

7. Wilbur Rehmann, Chair of the Montana Lottery Commission, has been designated to preside over and conduct this hearing.

8. The Montana Lottery Commission maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the commission.

9. An electronic copy of this proposal notice is available through the Department of Administration's web site at <http://doa.mt.gov/administrativerules.mcp>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the commission has determined that the proposed rule amendments and repeals will not significantly and directly impact small businesses.

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

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State March 17, 2014.