

BEFORE THE BOARD OF EXAMINERS
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PROPOSED
ARM 2.53.201 pertaining to model) AMENDMENT
procedural rules)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On May 22, 2016, the Board of Examiners (board) proposes to amend the above-stated rule.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, please contact the board no later than 5:00 p.m. on May 16, 2016, to advise us of the nature of the accommodation that you need. Please contact Mark Bruno, Department of Administration, 125 N. Roberts, Room 176, P.O. Box 200107, Helena, MT 59620-0107; telephone (406) 444-4612; Montana Relay Service 711; fax (406) 444-2812; or e-mail mbruno@mt.gov.

3. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

2.53.201 MODEL PROCEDURAL RULES ~~The board of examiners has herein adopted and incorporated the attorney general's model procedural rules one through 28 by reference to such rules as stated in ARM 1.3.101 through ARM 1.3.234 insofar as the board's functions relating to the liquidation of unsettled claims against the state are concerned, except that the following rules will apply, any provision in the model rules to the contrary notwithstanding:~~

(1) The Board of Examiners adopts and incorporates by reference the following model rules relating to citizen participation, notice and hearing procedures, and declaratory rulings, 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, as applicable, the appendix of sample forms in effect April 11, 2016; 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 April 11, 2016. These rules define model requirements for rulemaking under the Montana Administrative Procedure Act.

~~(1) Pursuant to 17-8-221(1), MCA, any person having a claim against the state, the settlement of which is not otherwise provided for by law, must present the same to the board of examiners at least two months before the meeting of the legislature accompanied by a statement showing the facts constituting the claim, verified in the same manner as complaints in civil actions.~~

~~(2) Pursuant to 17-8-222(2), MCA, no payment may be made in favor of a witness who appeared in behalf of a claimant.~~

~~(3) Pursuant to 17-8-225(1), MCA, the board of examiners must not entertain for the second time a demand against the state once rejected by it or by the legislature, unless such facts are presented to the board as in suits between individuals would furnish sufficient grounds for granting a new trial. Further, as provided in 17-8-226, MCA, any person interested, who is aggrieved by the disapproval of a claim by the board, may appeal from the decision to the legislature of the state by filing with the board a notice thereof, and upon receipt of such notice the board must transmit the demand and all the papers accompanying the same, with a statement of the evidence taken before it, to the legislature.~~

AUTH: 2-4-201, MCA

IMP: 2-4-201, MCA

STATEMENT OF REASONABLE NECESSITY: The board finds it necessary to amend ARM 2.53.201 to update to current statutes and rules. The model rules contained in ARM Title 1 have been updated since adoption of ARM 2.53.201, compelling the board to amend the references to these rules that the board has adopted by reference.

In addition, 17-8-221, 17-8-222, 17-8-225, and 17-8-226, MCA, have been repealed, negating the validity of current (1), (2), and (3), and so the board proposes removing those sections.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Mark Bruno, Department of Administration, 125 N. Roberts, Room 176, P.O. Box 200107, Helena, MT 59620-0107; telephone (406) 444-4612; Montana Relay Service 711; fax (406) 444-2812; or e-mail mbruno@mt.gov and must be received no later than 5:00 p.m., May 20, 2016.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit the request along with any written comments to the person listed in 4 above no later than 5:00 p.m., May 20, 2016.

6. If the board receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 15 persons based on the 150 legislators in the Montana Legislature.

7. The Board of Examiners maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. 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. 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 person in 4 above or may be made by completing a request form at any rules hearing held by the board.

8. An electronic copy of this proposal notice is available through the Department of Administration's web site at <http://doa.mt.gov/administrativerules>. 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 board 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.

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

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

By: /s/ Sheila Hogan
Sheila Hogan, Executive Secretary
Board of Examiners

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

Certified to the Secretary of State April 11, 2016.