

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

In the matter of the amendment of ARM)	NOTICE OF PROPOSED
2.63.204, 2.63.407, 2.63.606, and)	AMENDMENT AND ADOPTION
2.63.1201 pertaining to general)	
provisions, retailer commission,)	NO PUBLIC HEARING
duplicate licenses, and prizes and)	CONTEMPLATED
adoption of New Rule I pertaining to)	
acceptable forms of payment)	

TO: All Concerned Persons

1. On February 12, 2019, the State Lottery Commission proposes to amend and adopt the above-stated rules.

2. The State Lottery Commission 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 State Lottery Commission no later than 5:00 p.m. on January 23, 2019, to advise us of the nature of the accommodation that you need. Please contact Denise Blankenship, State 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 to dblankenship@mt.gov.

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

2.63.204 GENERAL PROVISIONS (1) through (3) remain the same.

(4) The director shall adopt ~~rules~~ parameters for all games, including, but not limited to:

(a) through (f) remain the same.

(5) Game and promotional coupon ~~rules~~ parameters are subject to the commission's concurrence.

(6) remains the same.

AUTH: 23-7-202, MCA

IMP: 23-7-110, 23-7-202, 23-7-211, 23-7-212, 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: Because there has been some confusion, the commission determined it is necessary to amend "rules" to "parameters" to clarify that the requirements for lottery games are not adopted in administrative rule. "Parameters" better describes game specifications that the commission approves for all lottery games and promotions. Parameters include game design, ticket graphics, odds and prize structures, instructions on how to play

the game, and how to redeem a prize, as well as other characteristics associated with a game. These parameters are unique and change in every new game.

2.63.407 RETAILER COMMISSION (1) and (2) remain the same.

(a) Each retailer is assigned a scratch ticket sales base. The scratch ticket sales base is determined using the prior fiscal year's average scratch ticket pack activations minus pack returns.

(b) through (3) remain the same.

(a) Each retailer is assigned a terminal-issued ticket sales base for participating games. The terminal-issued ticket quarterly sales base is determined by a retailer's previous year's sales performance. Retailers with quarterly revenue greater than \$1,000 are eligible for this bonus program.

(b) through (5) 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 has determined further explanation of how the scratch ticket incentive sales base is calculated is necessary because the scratch incentive program is outlined in rule, but how the base is determined for the program is not defined. Scratch ticket sales are based on activations of packs of tickets sold to a retailer. Active status is a pack's status when it is being sold to the public. The total cost of active packs is measured by the lottery as sales, and the minimum sales a retailer must meet to qualify for an incentive is determined by this amount. The retailer's past year's sales of terminal-issued games determine if a retailer is qualified to receive a bonus. If the retailer meets the minimum sales requirement of \$1,000, it has the opportunity to increase its sales and receive a bonus based on the percentage of increase. Traditional retailers have participated in a similar incentive program for over two decades. The commission made the decision to offer this incentive program to Montana Sports Action (MSA) retailers as well, which rewards the MSA retailer for promoting sales and increases revenue for the lottery. This will assist the lottery in its mission of funding the STEM Scholarship Program and increasing its annual transfer to the general fund.

2.63.606 DUPLICATE LICENSES (1) and (2) remain the same.

(3) The request for a duplicate license must be accompanied by a nonrefundable fee of \$10.

(4) and (5) remain the same.

AUTH: 23-7-202, MCA

IMP: 23-7-211, MCA

STATEMENT OF REASONABLE NECESSITY: Only licensed retailers may sell lottery products in Montana. Upon completion of the licensure process, the lottery issues a license to the retailer, which identifies their retailer number, name, and business address allowing them to sell lottery products. The license is

nontransferable and must be prominently displayed at all times. If the retailer requires a duplicate license, it is assessed a replacement fee of \$10 because the lottery does incur costs to produce and supply the new license. Should a retailer locate the license after this process is complete, the commission believes it does not warrant a return of those funds because of its sunk costs.

2.63.1201 PRIZES (1) through (3) remain the same.

(4) Unless otherwise provided in the ~~rules~~ parameters for a specific game, a claimant shall sign the back of a winning lottery ticket.

(5) through (14) remain the same.

AUTH: 23-7-202, MCA

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

STATEMENT OF REASONABLE NECESSITY: The commission decided it is necessary to amend "rules" to "parameters" to clarify that the requirements for lottery games are not adopted in administrative rule. "Parameters" better describes game specifications that the commission approves for all lottery games and promotions. Conditional parameters can be defined as game design, ticket graphics, odds and prize structures, instructions on how to play the game, and how to redeem a prize, as well as other characteristics associated with a game. These parameters are unique and change in every new game designed.

4. The rule proposed to be adopted provides as follows:

NEW RULE I ACCEPTABLE FORMS OF PAYMENT (1) The Montana Lottery Commission is charged with maximizing the net revenue to the state general fund and to the Montana STEM scholarship program under 23-7-202, MCA.

(2) The following forms of payment are authorized for the purchase of lottery tickets:

- (a) cash;
- (b) check; and
- (c) debit card.

AUTH: 23-7-202, MCA

IMP: 23-7-202, MCA

STATEMENT OF REASONABLE NECESSITY: The commission is proposing to adopt NEW RULE I to clarify the acceptable forms of payment for the purchase of lottery tickets. The lottery continues to receive regular inquiries from sales agents and the public if tickets can be purchased with debit cards, which is a common practice in most states. Section 23-7-302(3), MCA, allows lottery purchases to be made only with cash or a check and not credit cards. A debit card is similar to a check in that it is linked to the customer's checking account, resulting in funds being transferred from one account to another, except instead of a paper instrument an electronic funds transfer occurs as described in 32-6-103(3)(a), MCA.

(An electronic funds transfer "...also includes a transfer resulting from a debit card transaction...") Clearly, debit cards are not a form of credit. By including debit cards as a form of payment, the lottery would continue to maximize the net revenue to the state general fund and the Montana STEM scholarship program as required under 23-7-202(3), MCA. In addition, it would be easier for customers to purchase, and more efficient for retailers to sell, lottery products and would increase their sales commission. In short, the commission is proposing this new rule to respond to public demand and to maximize revenue while not violating the prohibition against using credit to purchase tickets.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions to Bryan Costigan, Security Director for the Montana Lottery, 2525 North Montana Avenue, Helena, Montana 59601; telephone (406) 444-5804; fax (406) 444-5830; or e-mail to Bcostigan@mt.gov and must be received no later than 5:00 p.m. on February 8, 2019.

6. If persons who are directly affected by the proposed actions 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 this request along with any written comments to Bryan Costigan at the above address no later than 5:00 p.m., on February 8, 2019.

7. If the commission receives requests for a public hearing on the proposed actions from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed actions; 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 80 persons based on the number of lottery retailers in the state.

8. The State 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 5 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's website at <http://doa.mt.gov/administrativerules>. The department strives to make the electronic copy of the notice conform to the official published version but advises all concerned persons that if a discrepancy exists between the official text of the notice and the department's online version of the notice, only the official text will be considered. In addition, although the department works to keep its website accessible at all times, concerned persons should be aware that the

website 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 rule adoption 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 January 2, 2019.