

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

In the matter of the amendment of ARM) AMENDED NOTICE OF PROPOSED
2.63.203, 2.63.401, 2.63.403, 2.63.407,) AMENDMENT
2.63.611, and 2.63.1201 pertaining to)
definitions, places of sale, applications) NO PUBLIC HEARING
and fees, commission, revocation or) CONTEMPLATED
suspension of license, and prizes)

TO: All Concerned Persons

1. On January 15, 2022, the commission proposes to amend the above-stated rules.

2. On November 5, 2021, the commission published MAR Notice No. 2-63-621 pertaining to the proposed amendment of the above-stated rules at page 1441 of the 2021 Montana Administrative Register, Issue Number 21. The commission inadvertently failed to notify the appropriate interim committee concurrently with filing the proposal with the Secretary of State (2-4-302(2)(a), MCA). The commission has subsequently notified the appropriate interim committee. The commission is extending the comment period in this notice, but the proposed amendments have not changed since the initial notice.

3. The 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, contact the Montana Lottery no later than 5:00 p.m. on December 1, 2021, 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 6073, Helena, Montana 59604-6073; telephone (406) 444-5801; fax (406) 444-5830; TDD/Montana Relay Service (406) 444-9642; or by e-mail at dblankenship@mt.gov.

4. GENERAL STATEMENT OF REASONABLE NECESSITY:

As part of its required biennial review of rules, the commission has identified necessary changes identified in these proposed amendments. Some of the proposed amendments are technical in nature, such as amending punctuation. Reasons for other proposed changes are addressed specifically for those rules.

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

2.63.203 DEFINITIONS In addition to the definitions found in 23-7-103, MCA, the following definitions apply to this chapter:
(1) remains the same.

(2) "License" means the document issued by the lottery which authorizes a ~~retailer~~ sales agent to sell lottery tickets at a fixed place of business.

(3) through (8) remain the same.

AUTH: 23-7-202, MCA

IMP: 23-7-301, 23-7-302, MCA

STATEMENT OF REASONABLE NECESSITY: The commission is changing the terminology from "retailer" to "sales agent" to be consistent with the terminology used in other rules in this chapter and in Chapter 284, Laws of 2019 (House Bill 725).

2.63.401 SALES AGENT PLACES OF SALE (1) through (2)(b) remain the same.

~~(c) whose owner has the appropriate alcoholic beverage license as defined in 23-5-119, MCA;~~

(d) through (i) remain the same but are renumbered (c) through (h).

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

IMP: 23-7-103, 23-7-301, 23-7-306, 23-7-307, MCA

STATEMENT OF REASONABLE NECESSITY: The commission proposes to remove (2)(c) as the result of an order of the Montana First Judicial District Court of Lewis and Clark County that determined the alcoholic beverage license requirement was in conflict with House Bill 725.

2.63.403 SALES AGENT APPLICATIONS AND FEES (1) A person interested in obtaining a license as a sales agent shall:

(a) complete an ~~eStop~~ application and pay the required licensing fee ~~on the state licensing system portal at www.eStop.mt.gov;~~

(b) through (3) remain the same.

AUTH: 23-7-202, MCA

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

STATEMENT OF REASONABLE NECESSITY: Based on input from applicants, the commission proposes to amend ARM 2.63.403 to remove reference to eStop. Because the specific information technology system used to submit applications is subject to change based on the needs of the State as a whole, it will be less confusing to applicants if the commission removes reference to a specific IT system that may change or be rebranded. As stated in the remainder of ARM 2.63.403, application forms are available at montanalottery.com.

2.63.407 SALES AGENT COMMISSION (1) through (5) remain the same.

~~(6) Sales agents who offer sports wagers are entitled to a 6 percent base commission of the value of sports wagers made.~~ The sales agent commission for sports wagers will be set by the State Lottery and Sports Wagering Commission.

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

STATEMENT OF REASONABLE NECESSITY: In response to requests from sports wagering sales agents, the lottery is proposing to allow the commission to set sales agent commissions in response to quickly changing business needs.

2.63.611 REVOCATION OR SUSPENSION OF LICENSE (1) through (3) remain the same.

~~(4) The director may decline to renew a license that could be revoked or suspended under this rule.~~

(5) remains the same but is renumbered (4).

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

STATEMENT OF REASONABLE NECESSITY: Lottery licenses do not need to be renewed periodically. Because the commission does not renew licenses, (4) was not necessary.

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

(4) The claimant's name, city of residence, and amount of prize is public information. The lottery may use a claimant's name and photograph for publicity and advertising purposes only upon written authorization by the claimant.

(5) through (15) remain the same.

AUTH: 23-7-202, 23-7-311, MCA
IMP: 23-7-108, 23-7-202, 23-7-211, MCA

STATEMENT OF REASONABLE NECESSITY: The 2021 legislature enacted Chapter 116, Laws of 2021 (House Bill 232), to protect the privacy of lottery players. With the enactment of HB 232, it is necessary for the commission to amend (4) to provide that a claimant's name is not public information.

6. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to Bryan Costigan, Montana Lottery, 2525 N. Montana Ave., Helena, Montana 59601; telephone (406) 444-5804; fax (406) 444-5830; or e-mail bcostigan@mt.gov, and must be received no later than 5:00 p.m., December 17, 2021.

7. 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., December 1, 2021.

8. If the commission 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. The commission will hold a hearing on this proposal if the commission receives requests for a hearing from 25 persons, because ten percent of those directly affected has been determined to be 122 persons based on the approximately 1,223 licensed sales agents in Montana.

9. The 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 mailing list shall make a written request which includes the name and mailing address or e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding Montana Lottery rulemaking actions. 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 paragraph 6 above or may be made by completing a request form at any rules hearing held by the department.

10. An electronic copy of this proposal notice is available through the department's website at doa.mt.gov/administrativerules. The department strives to make its online version of the notice conform to the official published version, but advises all concerned persons that if a discrepancy exists between the official version and the department's online version, 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.

11. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. Representative Frank Garner, the primary sponsor of HB 232 (2021), was contacted on October 26, 2021, by electronic mail and United States Postal Service first class mail to the address on file for him with the Secretary of State. No comments were received.

12. The commission has determined that under 2-4-111, MCA, the proposed amendments will not significantly and directly affect small businesses.

By: /s/ John Tarr
John Tarr, Chair
State Lottery and
Sports Wagering Commission

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

Certified to the Secretary of State November 9, 2021.