

SENATE BILL NO. 1

INTRODUCED BY S. MALEK

BY REQUEST OF THE STATE ADMINISTRATION AND VETERANS' AFFAIRS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEFINITION OF "RULE" FOR THE PURPOSE OF EXEMPTING CERTAIN LOTTERY GAME PARAMETERS FROM RULEMAKING PROCEDURES UNDER THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTION 2-4-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 2-4-102, MCA, is amended to read:

**"2-4-102. Definitions.** For purposes of this chapter, the following definitions apply:

(1) "Administrative rule review committee" or "committee" means the appropriate committee assigned subject matter jurisdiction in Title 5, chapter 5, part 2.

(2) (a) "Agency" means an agency, as defined in 2-3-102, of state government, except that the provisions of this chapter do not apply to the following:

(i) the state board of pardons and parole, which is exempt from the contested case and judicial review of contested cases provisions contained in this chapter. However, the board is subject to the remainder of the provisions of this chapter.

(ii) the supervision and administration of a penal institution with regard to the institutional supervision, custody, control, care, or treatment of youth or prisoners;

(iii) the board of regents and the Montana university system;

(iv) the financing, construction, and maintenance of public works;

(v) the public service commission when conducting arbitration proceedings pursuant to 47 U.S.C. 252 and 69-3-837.

(b) The term does not include a school district, a unit of local government, or any other political subdivision of the state.

(3) "ARM" means the Administrative Rules of Montana.

(4) "Contested case" means a proceeding before an agency in which a determination of legal rights,

1 duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes  
2 but is not restricted to ratemaking, price fixing, and licensing.

3 (5) (a) "Interested person" means a person who has expressed to the agency an interest concerning  
4 agency actions under this chapter and has requested to be placed on the agency's list of interested persons as  
5 to matters of which the person desires to be given notice.

6 (b) The term does not extend to contested cases.

7 (6) "License" includes the whole or part of an agency permit, certificate, approval, registration, charter,  
8 or other form of permission required by law but does not include a license required solely for revenue purposes.

9 (7) "Licensing" includes an agency process respecting the grant, denial, renewal, revocation,  
10 suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

11 (8) "Party" means a person named or admitted as a party or properly seeking and entitled as of right to  
12 be admitted as a party, but this chapter may not be construed to prevent an agency from admitting any person  
13 as a party for limited purposes.

14 (9) "Person" means an individual, partnership, corporation, association, governmental subdivision,  
15 agency, or public organization of any character.

16 (10) "Register" means the Montana Administrative Register.

17 (11) (a) "Rule" means each agency regulation, standard, or statement of general applicability that  
18 implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice  
19 requirements of an agency. The term includes the amendment or repeal of a prior rule.

20 (b) The term does not include:

21 (i) statements concerning only the internal management of an agency or state government and not  
22 affecting private rights or procedures available to the public, including rules implementing the state personnel  
23 classification plan, the state wage and salary plan, or the statewide accounting, budgeting, and human resource  
24 system;

25 (ii) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

26 (iii) rules relating to the use of public works, facilities, streets, and highways when the substance of the  
27 rules is indicated to the public by means of signs or signals;

28 (iv) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when there is  
29 a statutory requirement for the publication of the rules and rules adopted annually or biennially relating to the  
30 seasonal recreational use of lands and waters owned or controlled by the state when the substance of the rules

1 is indicated to the public by means of signs or signals; ~~or~~

2 (v) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in  
3 accordance with 2-4-306 and must be published in the ARM; or

4 (vi) game parameters approved by the state lottery commission relating to a specific lottery game. This  
5 subsection (11)(b)(vi) does not exempt generally applicable policies governing the state lottery that are otherwise  
6 subject to the Montana Administrative Procedure Act.

7 (12) (a) "Significant interest to the public" means agency actions under this chapter regarding matters  
8 that the agency knows to be of widespread citizen interest. These matters include issues involving a substantial  
9 fiscal impact to or controversy involving a particular class or group of individuals.

10 (b) The term does not extend to contested cases.

11 (13) "Small business" means a business entity, including its affiliates, that is independently owned and  
12 operated and that employs fewer than 50 full-time employees.

13 (14) "Substantive rules" are either:

14 (a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated  
15 authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid;

16 or

17 (b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under  
18 express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law."

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20 NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

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