



Montana Legislative Services Division
Legal Services Office

TO: State Administration and Veterans' Affairs Interim Committee
FROM: K. Virginia Aldrich
DATE: October 18, 2019
RE: Legislative Administrative Rule Review Report

Pursuant to 5-5-228, MCA, the State Administration and Veterans' Affairs Interim Committee is responsible for reviewing administrative rules within its jurisdiction. Staff for the State Administration and Veterans' Affairs Interim Committee has prepared this report for informational purposes only. This report does not represent any action or opinion of the State Administration and Veterans' Affairs Interim Committee and does not preclude additional action that may be taken by the State Administration and Veterans' Affairs Interim Committee pursuant to its authority under the Montana Administrative Procedure Act (Title 2, chapter 4, MCA).

MAR NOTICE NUMBER: 2-63-580

AGENCY/BOARD: State Lottery and Sports Wagering Commission

RULE CLASSIFICATION: (e.g. substantive/interpretive/emergency/temporary): Substantive

SUBJECT: Sports Wagering

NOTICE DESCRIPTION: (e.g. proposal notice/adoption notice): Notice of Public Hearing on Proposed Adoption, Amendment, and Repeal - Sports Wagering Accounts - Self-Exclusion - Responsible Gaming - Age Verification - General Provisions - Place of Sale - Licensing - Fees - Electronic Fund Transfers - Accounting - Retailer Commission - Notices - Investigative Cooperation - Prizes - Redemptions to Implement Sports Wagering - Forms of Payment.

SUMMARY OF RULE(S):

Chapter 284, L. 2019, provided for sports wagering in Montana as administered by the State Lottery and Sports Wagering Commission (Commission). In response to the recent legislation, the Commission proposes to adopt four rules pertaining to sports wagering accounts, self-exclusion, responsible gaming, and age verification, amend 21 rules pertaining to general provisions, place of sale licensing, fees, electronic fund transfers, accounting, retailer commission, notices, investigative cooperation, prizes, and redemptions to implement sports wagering, and repeal one rule pertaining to forms of payment.

The Commission proposes to adopt one rule concerning sports wagering accounts. New Rule I requires a person to establish a sports wagering account before the person may engage in mobile sports wagering. Under the proposal, establishment of a sports wagering account requires the lottery to verify the player's identity, age, eligibility, and acceptance of terms. The proposal limits

each player to one sports wagering account, limits the allowable funding methods, and provides for how a sports wagering account may be suspended. In addition to suspending the account for illegal activity, fraudulent deposit attempts, negative account balances, accounts issued in error or in violation of statute or rule, or a violation of the account terms, the Commission proposes to suspend accounts that have not been used to make wagers for 18 consecutive months. When a sports wagering account is suspended, a player may not wager, deposit funds, withdraw funds "unless the reason for the suspension would not prohibit a withdrawal", change the account, or remove the account from the system. However, a suspended account may be restored if it was suspended due to the self-exclusion program, upon the lottery's permission, or when the player is no longer prohibited from participating in sports wagering. The proposed rule also provides fund withdrawal conditions. The Commission proposes that funds within a suspended account that has not been used to make wagers for 18 consecutive months will be "no longer accessible by the player". However, the rule also provides the funds must be "returned to the player" and allows the player to create a new sports wagering account after the suspended account is closed.

In addition to a sports wagering account that provides mobile sports wagering, a person may make an "anonymous wager" at a sports wagering facility, which will "allow persons who are new to sports wagering the ability to experience sports betting without providing personal information." The Commission has clarified that an anonymous wager is a wager that is placed at a sports wagering facility without using a sports wagering account. Therefore, while a sports wagering facility must verify the player's eligibility, the player's information is not retained after the wager is placed.

The Commission proposes to adopt two rules to "contribut[e] to responsible gaming" Changes made by Chapter 284, L. 2019, specify that the Commission must adopt rules relating to lottery and sports wagering that include "contribution and participation in responsible gaming and consumer protection activities and programs". New Rule II provides for a voluntary self-exclusion program that allows a person to voluntarily participate in a program that forbids the participant from creating a sports wagering account, does not allow the participant to collect winnings or recover losses from a sports wager, and requires that the participant forfeit rewards or points earned through promotional programs offered by the Commission. The Commission notes that "self-exclusion programs are a commonly employed strategy for responsible gaming." In addition, the Commission proposes to adopt New Rule III to allow players choices to "select responsible gaming options" including self-limiting options that provide deposit and spending limits.

The Commission proposes to adopt New Rule IV that provides age restrictions relating to the sale, purchase, or cashing of lottery products to individuals who are 18 years of age or older as provided by statute. The proposed rule also states that the Commission must verify the age of individuals establishing a sports wagering account through physical verification of a government-issued identification or electronic verification of information provided by the individual. The proposed rule moves all references to age restrictions in one rule to avoid confusion.

Chapter 284, L. 2019, requires the Commission to adopt rules where sports wagering may be offered. The Commission proposes to amend one rule to provide that sports wagering may be offered at locations that meet the current requirements for where lottery tickets or chances may be sold. In addition, the Commission proposes to add several additional requirements for sports wagering locations. Specifically, the proposal requires that a sports wagering location must be "under the control of a person in possession of a gambling operator license as defined in 23-5-177, MCA." Under section 23-7-103, MCA, a sports wagering facility is defined as a location that has a sports wagering license and a gambling operator license.

In addition to this requirement, the Commission also proposes that a sports wagering location must have "the appropriate alcoholic beverage license as defined in 23-5-119, MCA." In giving its reasoning for adopting the alcohol license requirement, the Commission states that:

During legislative hearings on HB 725, there was testimony requesting that sports wagering be limited to taverns. As a result, an amendment to the legislation was offered and accepted to require a gambling operator license to limit sports wagering to locations with gambling. The lottery intends to clarify this further by specifying that, in addition to the gambling operator license, an appropriate alcoholic beverage license as defined in 23-5-119, MCA, is also required. The lottery has taken this approach because by limiting eligibility to locations that possess the appropriate alcoholic beverage license for certain gambling activities, the lottery will ensure a sufficient number of locations to offer sports wagering and help limit any adverse impacts of an overabundance of locations. Since the distribution of alcoholic beverage licenses is based upon population, linking sports wagering to both license requirements ensures a similar balanced distribution of the sports wagering licenses."

Before issuing a license, section 23-7-301, MCA, requires that the director consider "the sufficiency of existing licenses to serve the public convenience and the volume of the expected sales". However, an administrative rule may not engraft additional requirements that were not envisioned by the Legislature. *See, e.g., Bell v. St.*, 182 Mont. 21, 594 P.2d 331 (1979). Chapter 284, L. 2019, the legislation that authorized sports betting, does not mention or appear to require an alcohol license for a sports wagering facility. Indeed, the section that the proposed rule provides as stating the "appropriate alcoholic beverage license" requires that an applicant must have an appropriate alcoholic beverage license for gambling activities under "Title 23, chapter 5, part 3, 5, or 6." Title 23, chapter 5, parts 3, 5, and 6, relate specifically to card games, sports pools, and video game machines. The "sports pools" authorized under Title 23, part 5, have been authorized by statute since at least 1991 and appear to be unrelated to the "pools" encompassed as a part of sports wagering. More specifically, the sports wagering statutes explicitly exclude "sports pools governed by Title 23, chapter 5, part 5" from the term "lottery game". Thus, to the extent that an alcohol license is not contemplated by statute for the operation of a sports wagering facility, there may be a potential legal issue with the Commission's proposal to require an alcohol license to be eligible to be a sports wagering location.

The Commission also proposes to update a rule that provides that the director shall adopt parameters for sports wagering gaming "including but not limited to" holding fixed odds wagering, *bettor participation in wagering games*, minimum and maximum wager limits, *bet acceptance, bet cancellation*, event results, winning bets, winnings payouts, maximum winnings, *disputes and complaints*, and sports and bet types. Game parameters "relating to a specific lottery game" are explicitly exempted from the Montana Administrative Procedure Act (MAPA). Section 2-4-102, MCA. However, Chapter 284, L. 2019, specified that the Commission must adopt *rules*, including but not limited to "acceptance of wagers on a sports event or a series of sports events", "player exclusion requirements", and "protections for an individual placing a wager." The statement of reasonable necessity notes that the game parameters are "unique and change in every new game"; thus, they appear to meet the MAPA exclusion requirements. However, the language inserted by Chapter 284, L. 2019, makes it unclear whether the Legislature intended that these subjects be governed by rules only or by rules and parameters. Thus, to the extent that these parameters could be broadly applied, they should be placed in rule. However, where they apply only to one game, as this rule proposal suggests, they may be adopted as parameters. In either case, MAPA only exempts game parameters that are "approved by the state lottery commission . . ." Upon discussion with staff, the Commission has agreed that the Commission, not the director, shall approve game parameters and that the proposed rule will reflect this change upon its adoption.

The Commission is proposing to amend one rule to reflect changes in the types of licenses allowed by statute. The \$50 license fee has not been amended, but because there are now two types of licenses rather than one (lottery license or sports wagering license), the Commission has provided the fee estimate for the sports wagering licenses. The Commission states that there are 1,400 licensed gambling operators who would be eligible to apply for a sports wagering license. "If the gambling operators licensed currently apply for sports wagering licenses, the cumulative revenue increase for the lottery will be \$70,000."

The Commission proposes to provide sales agents with means to track sales, cashing, adjustment, and invoicing activity for bookkeeping purposes.

Current rules allow the director to require a surety bond from a lottery sales agent applicant. The rule proposal deletes language about how the bond requirement decision is made (currently based on the applicant's credit risk score exceeding a maximum allowable score of 30) because the "former rules utilized a scoring system that is no longer in use in the industry." In addition, statute requires that the bond amount be provided in the Commission's rules, so the proposal provides how the amount of the bond will be determined (based on the sales total of the previously licensed applicant or estimated sales totals for a new location) and requires the bond to be maintained for two years.

The Commission proposes to update sales commission amounts. The amendment proposal provides sales agents with a 6% base commission of a sports wager, and sports wagering sales will not have an additional sales incentive program. By contrast, existing rules (which will not

change) provide sales agents who sell scratch or terminal-issued tickets with a 5% base commission with additional incremental incentive commissions.

The Commission proposes to amend one rule relating to the display of licenses, notices, and restrictions. The proposed amendments would require a sales agent to display signage stating that a person must be 18 years of age or older to play and to display information that includes sports wagering game conditions, responsible gaming resources, and information about how a player may establish self-imposed responsible gaming limits.

The Commission proposes to update its rule setting the fee accompanying a request for a duplicate license fee from \$10 to \$25. The Commission estimates that 20 licenses a year are replaced, and the increase in the fee would result in an additional \$300 annually.

The Commission proposes to update its rule on the revocation or suspension of a license to include the ability to suspend and revoke a license of a person who has tampered with lottery or sports wagering equipment or of a person who has knowingly cashed a lottery or sports wager ticket for a person under the age of 18 or has allowed an employee under the age of 18 to cash a lottery or sports wager ticket.

The Commission proposes to amend a current rule allowing the director to issue special temporary licenses. The proposal provides that temporary licenses are restricted to lottery-only sales agents. The proposal states that "[n]o temporary licenses will be issued for sports wagering."

The Commission proposes that sales agents must contact the lottery to report any suspicious activity that could affect the integrity of the lottery. In addition, the proposed amendments provide that the lottery "shall monitor and review transaction activity to ensure system integrity and for potential criminal violations."

The Commission also proposes to require the return of lottery "equipment and paper" when a debt is not paid to the lottery or when a license is revoked or suspended. The Commission states that the equipment and paper "pla[y] a part in the security and integrity of the lottery and nee[d] to be controlled by the lottery if they are no longer in use by the sales agent."

The Commission proposes to update definitions and make stylistic corrections throughout the proposal for consistency with statutory changes and to improve clarity. In addition, several existing rules were updated to provide the same administration requirements for sports gambling as currently required for previously existing lottery games. For example, sports wagering was inserted into the rule concerning redemption of tickets; thus, it will be subject to the same redemption procedures that currently govern lottery tickets. However, in addition to the existing methods, the Commission also proposes to allow a winning sports wager ticket to be redeemed to a player's sports wagering account when the sports wager is managed through the player's account.

A rule concerning acceptable forms of payment was adopted earlier this year to address the use of debit cards. Changes made by the 2019 Legislature in Chapter 284, L. 2019, now specify in statute that debit cards can be used (up to the daily withdrawal amount of the issuing debit card lending institution). Because the rule unnecessarily duplicates the statutes provisions, the Commission proposes to repeal the rule.

NOTES: A public hearing will be held on October 28, 2019, at 10:00 a.m. at the State Lottery Headquarters, 2525 N. Montana Avenue, Helena, Montana. The public comment period ends on November 4, 2019.

FULL TEXT OF NOTICE: The full text of the notice proposal and the amended proposal may be found online at http://www.mtrules.org/gateway/Cycle_Home.asp?CID=2988.

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