

MONTANA TAVERN TIMES

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What is gambling? As defined in statute, there are three basic components necessary: **Consideration** (something of value), **Chance** (the activity), and **Reward** (prize). Those three elements are the key that unlocks Title 23, Chapter 5 of Montana Code Annotated which establishes the Gambling Control Division and sets the foundation for gambling regulation in Montana. The Division is charged with maintaining a uniform regulatory climate that is fair and free of corrupt influences. Through the coming months we will explore the relevant laws and rules and I will highlight areas that are commonly the subject of questions.

Who can offer gambling? In order to offer a gambling activity to the public (except for raffles), an establishment or organization must receive the applicable license or permit from the Division. The legislature has established that the applicant does not have a right to the issuance of a license or permit, it is a privilege. But, they also indicated that this privilege is revocable only for good cause. Unlike a liquor license, once granted, the holder does not acquire a vested right in the license or permit issued and the license or permit may not be sold, assigned, leased, or transferred.

The application process can seem a bit daunting at times, but the Division is continually working at simplifying or streamlining the process as much as possible while maintaining the integrity of the system. The process is designed to evaluate the basic qualifications necessary for licensure. The department shall issue a license unless the department can demonstrate that the applicant:

- Is a person whose prior financial or other activities or criminal record:
 - Poses a threat to the public interest of the state;
 - Poses a threat to the effective regulation and control of gambling; or
 - Creates a danger of illegal practices, methods, or activities in the conduct of gambling or in the carrying on of the business and financial arrangements incidental to gambling;
- Has been convicted of a felony offense within 5 years of the date of application or is on probation or parole or under deferred prosecution for committing a felony offense; or
- Is receiving a substantial amount of financing for the proposed operation from an unsuitable source; or
- Falsified the license or permit application.

What types of activities can be offered? The Montana Constitution has made clear that only those types of gambling and gambling activities that are specifically and clearly allowed are legal. If it is a gambling activity (i.e. has the three elements – consideration, chance, and reward) that is not addressed or not authorized in statute, it is prohibited. There is a distinction between public gambling and a small group of friends or family participating in social activities in a private residential setting. The Division

predominantly focuses its attention on public gambling which is defined in statute as gambling conducted in:

- A place, building, or conveyance to which the public has access or may be permitted to have access;
- A place of public resort, including but not limited to a facility owned, managed, or operated by a partnership, corporation, association, club, fraternal order, or society, including a religious or charitable organization; or
- A place, building, or conveyance to which the public does not have access if the players are publicly solicited or the gambling activity is conducted in a predominantly commercial manner.

Who can participate? All participants must be at least 18 years of age. The exception to that is a person under 18 years of age may sell or buy tickets for or receive prizes from a raffle if the proceeds from the raffle are used to support charitable activities, scholarships or educational grants, or community service projects.

The vast amount of rules and regulations that operators need to be familiar with can be overwhelming. While this first article is a broad overview of gambling in Montana's current regulatory environment, the subsequent articles will explore more specific areas and dive into the details. Our goal is to be a resource for the new operators and provide a refresher to those that have been in business a long time. (References: Title 23, Chapter 5, Part 1, MCA; Title 23, Chapter 16, Subchapter 1-2, ARM)