

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I concerning temporary gambling authority and the amendment of ARM 23.16.119, 23.16.502, 23.16.1702, 23.16.1703 and 23.16.1907 concerning participation in gambling operations, sports pool design and operation, and software specifications for video poker machines)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT
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TO: All Concerned Persons

1. On May 3, 2016, at 11:00 a.m., the Department of Justice will hold a public hearing in the conference room at the Gambling Control Division, 2550 Prospect Avenue, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Justice no later than 5:00 p.m. on April 26, 2016, to advise it of the nature of the accommodation that you need. Please contact Rick Ask, Administrator, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, Montana, 59620-1424; telephone (406) 444-1971; fax (406) 444-9157; Montana Relay Service 711; or e-mail rask@mt.gov.

3. The proposed new rule provides as follows:

NEW RULE I TEMPORARY GAMBLING AUTHORITY (1) The department may grant an applicant for a gambling operator license the temporary authority to operate gambling when:

- (a) the application and supporting documents, except Form FD-258 fingerprint cards, have been electronically submitted to the department through the department's licensing portal;
- (b) the department has concluded the application is complete;
- (c) within the 12-month period prior to submission of the application, the premises to be licensed had been licensed and operated as a gambling establishment, or licensed for the on-premises consumption of alcoholic beverages, and the premises were not altered from the last approved floor plan;
- (d) the department has no adverse information about the applicant's owners, officers, and managers prior to granting temporary authority; and

(e) except for those grandfathered locations provided for under ARM 23.16.130, the Department of Revenue has issued temporary authority to purvey alcoholic beverages.

(2) Temporary gambling authority is neither a conditional approval, temporary license nor a permit. It does not constitute a transfer of ownership, nor does it guarantee or imply any assurance that the department will approve the application.

(3) Temporary gambling authority is valid for 45 days, except when terminated sooner. Prior to the expiration of temporary gambling authority, and upon written request of the applicant, the department may extend temporary gambling authority for additional periods of time up to 45 days, if the department determines that the cause of the delay was beyond the control of the applicant. The department shall notify the applicant if it requires additional information to make this determination and the applicant shall have seven days to submit written documentation to establish to the department's satisfaction that the delay was beyond the applicant's control. The department shall notify the applicant whether temporary gambling authority is extended, and the length of the period of extension of temporary gambling authority.

(4) Temporary gambling authority terminates whenever:

(a) the department, pursuant to ARM 23.16.203(1), has notified the applicant of the department's intent to deny the operator license; or

(b) the Department of Revenue has revoked a license or withdrawn temporary authority to purvey alcoholic beverages.

(5) All gambling activities on applicant's premises which require a gambling operator's license must immediately cease upon termination of temporary gambling authority.

AUTH: 23-5-115, MCA

IMP: 23-5-115, 23-5-176, MCA

4. The rules as proposed to be amended provide as follows, new material underlined and deleted material interlined:

23.16.119 PARTICIPATION IN OPERATIONS (1) A Except as provided in [NEW RULE I], a person who proposes to acquire an ownership interest in a licensed gambling operation may not control or participate in any capacity reflecting ownership in that operation until the applicant's license has been approved by the department as provided for in ARM 23.16.116 or 23.16.117.

(2) remains the same.

AUTH: 23-5-115, MCA

IMP: 23-5-115, 23-5-118, 23-5-176, MCA

RATIONALE AND JUSTIFICATION: The 2015 Legislature passed HB38, which in part authorizes the Department of Justice to provide for the issuance of temporary operating authority. This new rule and the amendment to ARM 23.16.119 are therefore reasonable and necessary to effectuate and implement the

Legislature's determination that applicants for gambling operator licenses may be granted temporary authority to offer gambling activities to the public prior to, and pending final approval of the gambling license application.

To craft the procedures and conditions under which temporary gambling authority may be issued, the department looked to the rules and practices of the Department of Revenue, which has a long history of authorizing liquor license applicants the temporary authority to purvey alcoholic beverages pending final license approval. The proposed rule and amendment also address department concerns that temporary gambling authority not be an avenue for prohibited or unsuitable persons or entities to operate gambling activities, and that the application process is not unfairly delayed by applicants operating under temporary gambling authority.

To qualify for temporary gambling authority, the rule requires that gambling operator license applications be electronically submitted to the department through its online portal. This requirement serves to encourage applicants to file applications electronically through the state's portal, utilize efficiencies inherent in electronically formatted documents, and ensure the complete, timely and accurate submission of supporting documents.

23.16.502 APPLICATION FOR OPERATOR LICENSE (1) All applicants shall submit the following information on Forms ~~39~~ 5, 10, and FD-258, which are incorporated by reference and available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424, or on the department's web site www.dojmt.gov/gaming:

(a) through (2) remain the same.

AUTH: 23-5-112, 23-5-115, MCA

IMP: 23-5-115, 23-5-118, 23-5-176, 23-5-177, MCA

RATIONALE AND JUSTIFICATION: This rule amendment is reasonable and necessary to correct a misidentification of the forms which must be used by gambling operator license applicants. This amendment is made for clarification and informational purposes only.

23.16.1702 SPORTS POOL CARD (1) and (1)(a) remain the same.

(b) The numbers for each horizontal row and vertical column must be randomly assigned after the person conducting the pool closes the pool to additional sale of spaces but prior to the beginning of the sports event or the first event in a series of sport events. ~~Any unsold spaces at the time the numbers are assigned are considered purchased by the person conducting the sports pool and must be marked in a manner indicating that they may not be sold to another person.~~

(c) Any unsold spaces at the time the numbers are assigned are considered purchased by the person conducting the sports pool and must be marked in a manner indicating that they may not be sold to another person.

(c) remains the same but is renumbered (d).

~~(d)~~(e) Each competitor in the sports event must be assigned to either the horizontal or vertical axis of the master square before the beginning of each sports

event, except when the operator of the sports pool publicly declares by rules in advance of any sales to award equal prizes based upon both winning number combinations (e.g., when the score is 37–29, the winners are those holding spaces corresponding to vertical 7 and horizontal 9, and vertical 9 and horizontal 7).

(2) through (4) remain the same.

~~(a) rules for conducting the sports pool;~~

(b) remains the same, but is renumbered (a).

~~(c)(b) name of the competitors (or home vs. away/visitor) in the sports event or series of events, if known;~~

(d) through (g) remain the same, but are renumbered (c) through (f).

~~(h)(g) predetermined intervals, as provided in ARM 23.16.1705(3), for which a prize will be awarded, if any; and~~

~~(i)(h) name of the person conducting the sports pool;~~

~~(j) name or initials of participants who have purchased chances in the pool;~~

~~(k) amount or value of each individual prize and the total value of all prizes;~~

and

~~(l) name of the competitors and the date of a sports event that will be substituted for the original sports event if it is cancelled.~~

(5) After each prize is awarded, the names of the winners of each prize must be prominently displayed on each card. The name or initials of each participant who purchases a chance in the sports pool must be clearly displayed on the board as each chance is sold.

(6) A sports pool card must be retained by the person conducting the sports pool for at least 90 days from the date of the sports event, or last event in a series of sports events, whichever occurs first, upon which the sports pool was based. After each prize is awarded, the names of the winners of each prize must be prominently displayed on each card.

(7) If the sports event is cancelled, the person conducting the sports pool must refund the full amount of the purchase price to each participant.

(8) If the sports event is rescheduled, the person conducting the sport pool board may:

(a) cancel the board and refund all monies to the participants; or

(b) change the sports pool board only so as to reflect the new date of the sports event.

(9) A sports pool card must be retained by the person conducting the sports pool for at least 90 days from the date of the sports event, or last event in a series of sports events, upon which the sports pool was based, whichever occurs first.

AUTH: 23-5-115, 23-5-512, MCA

IMP: 23-5-502, 23-5-503, 23-5-512, MCA

23.16.1703 SALE OF SPORTS POOL CHANCES (1) through (3) remain the same.

(a) may not cancel the sports pool or alter it in any manner, except as provided in ARM 23.16.1702; and

(b) through (5) remain the same.

AUTH: 23-5-115, 23-5-512, MCA

IMP: 23-5-502, 23-5-503, 23-5-512, MCA

RATIONALE AND JUSTIFICATION: The Gambling Investigations Bureau, which enforces gambling laws and administrative rules and fields questions from gambling operators related to the operation of sports pools, recommended this rule amendment. The proposed amendment is reasonable and necessary to implement identified practical changes in the rule resulting from an error within the rule, as well as alternative ways to legitimately operate traditional sports pool boards.

The Gambling Investigations Bureau found that some operators structured their traditional sports pool boards so as to pay winners as though the winning and losing teams both held the vertical and horizontal axes, which was termed "paying both ways." Under this practice, it did not matter which team won the event. If the score at the final or predetermined interval was, for example, 37 to 29, the pertinent digits are 7 and 9. By paying both ways, potentially two squares would correspond to those digits, and the holders of each of those squares would be awarded an equal prize. Consequently, in that manner it does not matter which team is assigned to each axis. The department believes this is a valid way to play the game, so long as it is so described in advance of any sale of chances. Therefore, when the game is designed to "pay both ways," it is unnecessary to assign a team to a particular axis on the master square, which this amendment is intended to reflect.

Similarly, in some traditional sports pools that are not structured to "pay both ways," the Gambling Investigations Bureau found that, instead of assigning the team names to each axis, persons conducting the sports pool could assign the "home" team to one axis, and the "away" or "visitor" team to the other axis. Another method was to assign each axis with "winner" or "loser." The department believes these are valid ways to operate traditional sports pools, and therefore these rule amendments are reasonable and necessary to inform sports pool operators of these alternatives.

The amendment also deletes the erroneous requirement that the names or initials of the pool participants be indicated on the sports pool board "in advance of any sales." Since pool participants can only be identified as each chance is sold, the amendment reflects the requirement that the names or initials of the pool participants must be placed on the board as each chance is sold. Similarly, the Gambling Investigations Bureau suggested omitting as duplicative the requirement that the board "list the amount or value of each individual prize and the total value of all prizes," since the rule elsewhere requires that the board show the total number of chances available in the pool, the cost to the participant for each chance, and the total amount to be paid to each winner.

The Gambling Investigations Bureau further recommended omitting the requirement that sports pools identify a substitute sports event when the original sports event is cancelled. This requirement has rarely been satisfied by sports pool operators, but sports events are rarely cancelled. On the rare occasion that a sports event is cancelled, the amendment requires the person conducting the sports pool to fully refund the purchase price to each participant. If the sports event is not cancelled but only rescheduled, the person conducting the sports pool may cancel the sports pool and refund the purchase price to each participant, or the person conducting the sports pool may alter the board solely to change the date of the same

sports event. The amendment to ARM 23.16.1703 is necessary to reflect this single exception to the prohibition against cancelling sports boards after the sale of chances on the board has begun.

Other minor changes in style are made for clarification and ease of reading.

23.16.1907 SOFTWARE SPECIFICATIONS FOR VIDEO POKER MACHINES (1) through (1)(d) remain the same.

(e) display the winning ~~hands~~ hand and the number of credits awarded for that hand.

AUTH: 23-5-621, MCA

IMP: 23-5-602, 23-5-607, 23-5-621, MCA

RATIONALE AND JUSTIFICATION: This rule amendment is reasonable and necessary to correct a minor typographical error, where the plural of the word "hand" conflicts with the law, and is internally inconsistent with the singular "hand" used in the same sentence. This amendment is made for clarification only; no substantive change is intended.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Rick Ask, Administrator, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, Montana, 59620-1424; telephone (406) 444-1971; fax (406) 444-9157; or e-mail rask@mt.gov, and must be received no later than 5:00 p.m., May 6, 2016.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons may add their names to the interested persons list by submitting their contact information through the department's web site at <https://dojmt.gov/gaming/gcd-email-sign/> to receive notices of rulemaking actions by this agency. Notices will be sent by e-mail. Such request may also 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 department.

7. Cregg W. Coughlin, Assistant Attorney General, Gambling Control Division, has been designated to preside over and conduct the hearing.

8. An electronic copy of this proposal notice is available through the department's web site at <https://dojmt.gov/agooffice/administrative-rules>, or through the Gambling Control Division's web site at <https://dojmt.gov/gaming/gambling-laws-administrative-rules/>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned

persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor contact requirement of 2-4-302, MCA, does apply and has been fulfilled. The primary bill sponsor of HB 38 was contacted by e-mail on July 15, 2015.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Matthew T. Cochenour
MATTHEW T. COCHENOUR
Rule Reviewer

/s/ Timothy C. Fox
TIMOTHY C. FOX
Attorney General
Department of Justice

Certified to the Secretary of State March 28, 2016.