

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the adoption of	)	NOTICE OF PUBLIC HEARING ON
New Rules I, II, III, and IV	)	PROPOSED ADOPTION,
pertaining to authorization and	)	AMENDMENT, AND REPEAL
regulation of 50/50 raffles and	)	
50/50 raffle electronic processing	)	
systems, the amendment of ARM	)	
23.16.101, 23.16.107, 23.16.125,	)	
23.16.202, 23.16.203, 23.16.401,	)	
23.16.402, 23.16.403, 23.16.406,	)	
23.16.407, 23.16.1822,	)	
23.16.2602, and 23.16.3501	)	
pertaining to definitions, grounds	)	
for denial of a license, cross-	)	
references to alcoholic beverages	)	
licenses, credit play,	)	
administrative procedure, card	)	
dealer licensure, and raffles, and	)	
the repeal of ARM 23.16.410 and	)	
23.16.411 pertaining to card	)	
dealer licensure	)	

TO: All Concerned Persons

1. On January 24, 2019, at 1:30 p.m., the Department of Justice will hold a public hearing in the conference room of the Gambling Control Division, 2550 Prospect Avenue, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The Department of Justice 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 Department of Justice, no later than 5:00 p.m. on January 18, 2019, to advise us of the nature of the accommodation that you need. Please contact Jean Saye, Department of Justice, 2550 Prospect Avenue, P.O. Box 201424, Helena, Montana, 59620-1424; telephone (406) 444-1971; fax (406) 444-9157; or e-mail jsaye@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I DEFINITIONS As used throughout this subchapter, the following definitions apply:

(1) "50/50 raffle" means a raffle sponsored by a nonprofit organization in which the winner is awarded a monetary prize calculated by a predetermined

percentage of the gross raffle ticket sales proceeds (example: 50% to the player and 50% to the raffle sponsor).

(2) "50/50 raffle electronic processing system" means products and support services supplied to a 50/50 raffle sponsor.

(3) "Nonprofit organization" means a nonprofit organization as defined in 23-5-112, MCA.

AUTH: 23-5-112, 23-5-115, 23-5-413, MCA

IMP: 23-5-413, MCA

NEW RULE II AUTHORITY TO OFFER 50/50 RAFFLES, 50/50 RAFFLE PROCESSING SYSTEM RESTRICTIONS (1) Only a nonprofit organization, a college, a university, a public school district, or a nonpublic school may sponsor and offer a 50/50 raffle.

(2) All 50/50 raffles are subject to the following restrictions:

(a) the sponsor is responsible for compliance with Montana statutes and regulations, including ARM 23.16.2602, as well as all other applicable state and federal statutes and regulations;

(b) credit gambling is prohibited and 50/50 raffle sales may not be made by credit card;

(c) the drawing must occur and the winner must be identified on the date advertised to the public and established in the sponsor's rules; and

(d) proceeds from the raffle must be divided between the winner and the sponsor and may not include a percentage of ticket sales for administrative expenses or other fees payable to any third party.

(3) A nonprofit organization may purchase or contract for a 50/50 raffle electronic processing system subject to these restrictions:

(a) the nonprofit organization must register with the department for exemption from the general internet gambling prohibition as provided in ARM 23.16.2602;

(b) the sponsor may only use an approved 50/50 raffle electronic processing system;

(c) 50/50 raffle tickets may be sold only on the day of the drawing; and

(d) the department may conduct on-site inspections and tests of the 50/50 raffle electronic processing system to assure proper functioning and compliance.

AUTH: 23-5-112, 23-5-115, 23-5-413, MCA

IMP: 23-5-413, MCA

NEW RULE III REQUIREMENTS OF ASSOCIATED GAMBLING BUSINESSES SUPPLYING 50/50 RAFFLE ELECTRONIC PROCESSING SYSTEMS (1) Before contracting with a nonprofit organization to supply a 50/50 raffle electronic processing system, an associated gambling business must:

(a) be licensed under 23-5-178, MCA, and ARM 23.16.110; and

(b) submit to the department for testing and approval all hardware and software offered to a 50/50 raffle sponsor.

- (2) A 50/50 raffle electronic processing system may include:
- (a) payment processing software which distinguishes and prohibits credit card transactions;
  - (b) promotional advertising;
  - (c) secure raffle sales data compilation, tabulation, transmission, and storage;
  - (d) secure wired or wireless data transmission;
  - (e) duplicate raffle ticket or receipt printing;
  - (f) on-site or off-site computer processing and data storage;
  - (g) selection of the raffle winner using a secure random number generator; and
  - (h) related services approved by the department.

AUTH: 23-5-112, 23-5-115, 23-5-413, MCA  
IMP: 23-5-413, MCA

NEW RULE IV TESTING AND TESTING FEES (1) Each associated gambling business submitting a 50/50 raffle electronic processing system to the department for testing must deposit the sum of \$1,000 to begin testing. This fund is applied toward the department's actual testing cost and is managed as follows:

- (a) the department's technical services section will bill at the rate of \$130 per hour; and
- (b) the department will provide an accounting to the licensee for charges assessed and will refund any overpayment. The department will notify the submitting person of any underpayment and collect that money prior to notice of its intended action.

AUTH: 23-5-112, 23-5-115, 23-5-413, MCA  
IMP: 23-5-413, MCA

REASON: These new rules establish a regulatory system for 50/50 raffles authorized by 23-5-413, MCA. The Legislature has amended the raffle statute a number of times, and developing technology is poised to change how some raffles are conducted. Fifty-fifty raffles, conducted with paired, duplicate paper raffle tickets, have been lawful in their current form since 2009. New electronic processing systems are ready to assume a share of the raffles offered in Montana. These changes require rulemaking to regulate both traditional paper 50/50 raffles and the new raffles conducted electronically.

Montana law on raffles has changed greatly over the years. In the 1980s, raffles were regulated by county commissioners and raffle prizes could not exceed \$1,000 in value. Certain nonprofits were exempt from that prize limit, but the prize could not be awarded in cash. Mont. Code Ann. § 23-5-413 (1987). By 1993, the prize value had been raised to \$5,000 and, again, nonprofits were exempt from that prize limit. However, nonprofits were permitted to award cash prizes only up to \$1,000. Fifty-fifty raffles were then possible because nonprofits and religious corporations could offer a cash prize and they were not required to

own the prize prior to ticket sales. Mont. Code Ann. § 23-5-413 (1993). The statute was amended into its current form in 2009 when regulation of raffles shifted from county commissioners to the Gambling Control Division, which was granted rulemaking authority. The 2009 code maintained the general \$5,000 prize value and required most raffle sponsors to own the prize before selling tickets. The list of exempt organizations was amended to include nonprofit organizations, colleges and universities and schools. Those exempt organizations could then offer 50/50 raffles with unlimited cash prizes. Fifty-fifty raffles have become commonplace at activities such as sporting events, which regularly produce cash prizes of thousands of dollars.

Traditional 50/50 raffles have evolved over the years, but electronic processing systems, with rapid debit card transactions and real time stadium promotions, may produce ever more 50/50 raffles with larger cash prizes. Manufacturers of electronic 50/50 raffle processing systems wish to enter the Montana market. Rather than cash sales of traditional paired, duplicate paper raffle tickets, these systems apply new technology. The systems feature mobile handheld devices capable of making a debit card sale, recording and wirelessly transmitting the sale data, and printing a receipt/ticket for the player. The systems can automate recordkeeping and randomly select a winner. The Gambling Control Division has received inquiries from Montana nonprofit organizations about the permissibility of such systems. Presently one such firm has gained Montana licensure as an associated gambling business to serve as "a party in processing gambling transactions." The Division expects that firm and others will market their electronic processing systems to eligible Montana nonprofits and schools offering 50/50 raffles.

With the anticipated continued growth of 50/50 raffles, administrative rules are needed to regulate both traditional paper ticket raffles and electronic 50/50 raffles. The electronic systems are a new technology and have not previously been delivered through an associated gambling business licensee. The Division proposes these regulations to specifically allow these systems, to provide for testing and approval of the systems, and to place restrictions on the nonprofit organizations who offer 50/50 raffles and the licensed associated gambling business who supply the systems. Regulations are necessary to fulfill the Division's charge to protect the public as set forth in 23-5-110, MCA, which declares the State's public policy on gambling.

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

23.16.101 DEFINITIONS As used throughout this ~~subchapter~~ chapter, the following definitions apply:

(1) through (21) remain the same.

AUTH: 23-5-115, 23-5-621, MCA

IMP: 23-5-112, 23-5-115, 23-5-118, 23-5-176 23-5-629, 23-5-637, MCA

REASON: The Gambling Control Division's rules are divided into subchapters, many of which open with a rule that defines terms specifically applicable to that subchapter. The terms defined in this rule are used frequently in Chapter 16, subchapter 1, ARM, but are also commonly used in other subchapters as well. For instance, the term "ownership interest" has the same definition for purposes of subchapter 1 as it does in subchapter 5. See, e.g., ARM 23.16.502, pertaining to applications for a transfer of an ownership interest. Both the Division and the public have traditionally looked to ARM 23.16.101 for generally applicable definitions. However, the Division only recently observed the language of the rule reads as though its definitions are applicable only to subchapter 1. This amendment is meant to clarify that definitions found in ARM 23.16.101 are applicable to all of ARM Title 23, chapter 16.

23.16.107 GROUNDS FOR DENIAL OF GAMBLING LICENSE, PERMIT, OR AUTHORIZATION (1) through (1)(g) remain the same.

(h) failed within a reasonable time to supply records within the applicant's or licensee's control requested by the department in any license or permit application or renewal application, or in any financial audit initiated by the department or ordered through administrative or court action;

(h) through (k) remain the same, but are renumbered (i) through (l).  
(2) remains the same.

AUTH: 23-5-112, 23-5-115, MCA  
IMP: 23-5-115, 23-5-176, MCA

REASON: The Gambling Control Division's experience demonstrates that some applicants or licensees withhold or delay records production because there has been little or no consequence for failure to cooperate. The Division's inability to timely collect records increases personnel expenses. Additionally, delays caused by uncooperative applicants and licensees slow processing time for all others with matters pending before the Division. This rule will promote timely responses to Division requests for information or documentation or, alternatively, supply the Division with a tool to dispose of cases marked by unreasonable delays.

23.16.125 CHANGE OF LIQUOR ALCOHOLIC BEVERAGE LICENSE TYPE (1) through (3) remain the same.

AUTH: 23-5-115, MCA  
IMP: 23-5-119, MCA

REASON: The Department of Revenue Liquor Control Division formally changed its name and license references to the Department of Revenue Alcoholic Beverage Control Division to more accurately reflect the scope of its work. The Department of Justice is responding by amending its rules to reflect the new name.

23.16.202 CREDIT PLAY PROHIBITED (1) through (3) remain the same.

(4) All checks issued to a gambling operator for cash to participate in a gambling activity must be fully completed by the drafter (owner of the account). A completed check must include the name of the gambling licensee to whom it is payable, the amount of the check, the date upon which it was written, and the signature of the drafter. Evidence of a gambling licensee's routine pattern or practice of accepting checks omitting one or more of these elements raises a disputable presumption under ARM 23.16.3001 of illegal credit gambling.

(4) through (8) remain the same, but are renumbered (5) through (9).

AUTH: 23-5-115, MCA

IMP: 23-5-115, 23-5-157, MCA

REASON: A recent credit gambling criminal investigation and prosecution exposed a gambler and gambling licensee who exploited a weakness in the rule as written. The statute implemented, 23-5-157, MCA, prohibits "hold checks." This rule echoes that prohibition but permits a gambler to "repurchase" a check with cash if the check is exchanged for cash by noon the day after the check was written. If there is no date on the check there is no way to assure the check was not offered as a hold check or that the check was exchanged for cash by noon the day after it was issued. Actual experience has shown a gambler and gambling licensee successfully evading the bar on hold checks by routinely leaving the date blank on the check. This amendment will block that tactic.

23.16.203 ADMINISTRATIVE PROCEDURE (1) The department is authorized to investigate gambling activities, alleged violations of Title 23, chapter 5, MCA, and these rules, and all applications for licenses, permits, authorizations, and registrations. The department may inspect records and audit financial activities bearing on holders of, or applicants for, any gambling license, permit, authorization, or registration. Upon completion by the department of its investigation of any matter within its jurisdiction, the department shall notify the person involved of its intended action. ~~If the person involved then desires a hearing, he~~ A person desiring a hearing to challenge the intended action must submit a written request to the department within 20 days as provided in ARM 23.16.108.

(2) If the subject of an investigation fails within a reasonable time to supply the department with records specifically requested by the department and within the subject's control, the department may complete its investigation by:

(a) denying the license, permit, authorization, or registration that is the subject of the investigation; and/or

(b) taking any action authorized in 23-5-136, MCA.

(2) through (4) remain the same, but are renumbered (3) through (5).

AUTH: 23-5-115, MCA

IMP: 23-5-113, 23-5-115, 23-5-136, 23-5-628, MCA

REASON: The Gambling Control Division's experience demonstrates that some applicants or licensees withhold or delay records production because there has been little or no consequence for failure to cooperate. The Division's inability to timely collect records increases personnel expenses. Additionally, delays caused by uncooperative applicants and licensees slow processing time for all others with matters pending before the Division. This rule will promote timely responses to Division requests for information or documentation or, alternatively, supply the Division with a tool to dispose of cases marked by unreasonable delays.

23.16.401 APPLICATION FOR CARD DEALER LICENSE

(1) Applications for card dealer licenses (Form 4) are available on the department's website (www.dojmt.gov/gaming), from a local gGambling eControl Division office, or from a local Motor Vehicle Division office, or other public location designated by the department.

(2) An applicant for a card dealer license must first appear in person and present photographic verifications of his identity government-issued identification to an authorized representative of the Motor Vehicle Division. Upon confirmation of the applicant's identity, ~~the~~ authorized representative of the Motor Vehicle Division must:

- (a) obtain a photograph and signature of the applicant; ~~and~~
- (b) ~~provide a card dealer application packet which shall include:~~

(3) An applicant for a card dealer license must next submit a completed application to the Department of Justice, Gambling Control Division. The application is not complete unless it contains:

- (i)(a) Form 4, Montana a card dealer application; (Form 4) with all required information, signed and dated by the applicant;
  - (ii)(b) duplicate Forms FD-258 for two original sets of fingerprints to be obtained from and certified by a local law enforcement agency; and
  - (iii)(c) Form 10 for a completed personal history statements. (Form 10);
- and

(d) the license fee and fingerprint processing fee.

~~(2) The first year license fee required by Title 23, chapter 5, MCA, and a fingerprint processing fee must accompany each application.~~

~~(3) The application for a dealer license, Forms 4 and FD-258, are 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.~~

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

IMP: 23-5-115, 23-5-308, MCA

23.16.402 CARD DEALER LICENSE (1) A card dealer license issued by the department ~~must be in the form of a laminated identification card and must~~ will contain the licensee's following information:

- (a) ~~on the front of the license:~~
  - (i)(a) a photograph of the person to whom the license is issued;

~~(ii)(b) the first name, middle initial, and last name of the person to whom the license is issued; and~~

~~(iii)(c) the assigned license number and expiration date, specific to the person to whom the license is issued.~~

~~(2) Every dealer license expires annually on the licensee's birthday, and in no case less than 12 months from the date of issuance. Card dealer licenses expire according to the following schedule:~~

~~(a) card dealers holding valid licenses on [the effective date of this rule], retain their expiration; and~~

~~(b) card dealer licenses issued or renewed after [the effective date of this rule], will expire on June 30 of each year.~~

~~(3) A card dealer on duty in a licensed gambling premises:~~

~~(a) must wear and display in a prominent manner a valid card dealer license issued to the card dealer; and~~

~~(b) must comply with any player's or law enforcement officer's request to inspect the dealer's license.~~

~~(4) A card dealer's license is nontransferable and may not be worn or displayed by any person other than the named licensee. In the case of a violation of this rule:~~

~~(a) a federal, state, or local law enforcement officer charged with the responsibility of investigating gambling activities may seize an expired license or a license displayed by anyone other than the named licensee;~~

~~(b) any confiscated card dealer license must be sent to the department along with a report detailing the circumstances of the seizure; and~~

~~(c) upon receipt of a confiscated card dealer license and the accompanying report, the department must immediately begin an investigation into the circumstances for the purposes of determining whether a violation of Title 23, chapter 5, MCA, or these rules occurred.~~

AUTH: 23-5-115, MCA

IMP: 23-5-308, MCA

#### 23.16.403 PROCESSING OF CARD DEALER LICENSE APPLICATION RENEWAL, OR REPLACEMENT (1) remains the same.

~~(2) An application to renew a dealer license must be received by the department prior to the expiration date of the license. An application not postmarked by the date of expiration will result in expiration of the dealer license. A card dealer license will expire if the department does not receive the application to renew by the expiration date.~~

~~(3) If the holder of an expired license submits an application and supporting documents to renew his the license within 30 days after the expiration date, ~~he~~ the applicant may renew the license at the renewal license rate. If the renewal application ~~is~~ and supporting documents are not received within 30 days, the holder shall reapply for a new original license in the manner required by these rules.~~

(4) Replacement of a card dealer license is accomplished by ~~following the new license procedure~~ submitting a request to the department and including a \$10 fee.

AUTH: 23-5-115, MCA  
IMP: 23-5-308, MCA

23.16.406 TEMPORARY CARD DEALER LICENSE (1) ~~A temporary dealer license application packet may be obtained by an applicant from a local gambling control office, local Motor Vehicle Division office, or other public location designated by the department.~~ An applicant for a card dealer license may request a temporary card dealer license while the application is being processed.

(2) An applicant for a temporary card dealer license must first appear in person and present government issued identification before an authorized representative of the Motor Vehicle Division ~~and present photographic verification of applicant's identity.~~ Upon confirmation of the applicant's identity, the authorized representative of the Motor Vehicle Division must obtain a photograph and signature of the applicant.

(3) The applicant must then appear in person and submit to an investigator for the department:

(a) ~~a completed application~~ Form 4 with all required information, signed and dated by the applicant;

(b) ~~payment of a first year license fee and fingerprint processing fees;~~

(c) ~~valid photo identification and social security card or birth certificate;~~

(d) ~~(b) two complete original sets of fingerprints to be obtained from and certified by a local law enforcement agency; the department, or a private security company approved by the department; and~~

(e) ~~(c) verifiable evidence that the applicant has an offer of employment as a card dealer, or a reasonable prospect for employment as a card dealer, and that such employment is expected to commence within 14 days of making application; and~~

(d) the license fee and fingerprint processing fee.

(4) remains the same.

AUTH: 23-5-115, MCA  
IMP: 23-5-308, MCA

23.16.407 CONFISCATION OF TEMPORARY CARD DEALER LICENSE

(1) The department may ~~immediately~~ confiscate a temporary card dealer license by issuing a temporary cease and desist order based on a finding of any of the following conditions:

(a) and (b) remain the same.

AUTH: 23-5-115, MCA  
IMP: 23-5-115, 23-5-308, MCA

REASON: These rule amendments are part of an update of the entire subchapter of the rules pertaining to card dealers. This rewrite was undertaken to change card dealer license expirations to bring them in line with other license types regulated by the Gambling Control Division. Currently all other licenses expire on June 30, the end of the State's fiscal year. Card dealer licenses, however, expire on the individual licensee's birthday. That peculiar aspect of card dealer license regulation creates inefficiencies for Division staff and could also be troublesome to licensees trying to assure continuous licensure by their card dealers. That amendment affords an opportunity to improve other aspects of the subchapter including: condensing the rules, which permits the repeal of two rules; achieving procedural consistency between card dealer licenses and temporary card dealer licenses; establishing a requirement to wear one's own license while on duty; and improving clarity and readability.

23.16.1822 PERMIT NOT TRANSFERABLE (1) through (7)(b) remain the same.

(c) the ~~liquor~~ alcoholic beverage license associated with a licensed location/operator is placed on non-use status and machines are taken out of play for 30 days or more; or

(d) through (9) remain the same.

AUTH: 23-5-115, 23-5-621, MCA

IMP: 23-5-603, 23-5-611, 23-5-612, 23-5-621, MCA

REASON: As indicated in ARM 23.16.125 above.

23.16.2602 RAFFLE GENERAL REQUIREMENTS, AUTHORIZED RANDOM SELECTION PROCESSES, AND RECORD KEEPING REQUIREMENTS (1) remains the same.

(2) The following random selection processes are authorized for use in determining a winner of a raffle as defined in 23-5-112, MCA:

(a) a drawing from a drum or other receptacle containing raffle ticket stubs or other suitable indicators of the ticket purchaser's identity that have been thoroughly mixed before the drawing; and

(b) an approved 50/50 raffle electronic processing system containing a random number generator; and

~~(b)~~(c) selection by any other process if:

(i) through (7) remain the same.

AUTH: 23-5-115, 23-5-413, MCA

IMP: 23-5-112, 23-5-413, MCA

REASON: As stated in the reasonable necessity statement for New Rule I. Fifty-fifty raffle processing systems may contain a random number generator which has not been specifically designated an approved random selection process. This rule amendment is necessary to authorize the new process.

23.16.3501 DEPARTMENT APPROVAL OF PROMOTIONAL GAMES OF CHANCE, DEVICES OR ENTERPRISES (1) through (2)(a) remain the same.

(b) Payouts for bona fide promotional games of chance, offered by a gambling licensee and/or an on-premises consumption ~~liquor~~ alcoholic beverage licensee, are subject to the maximum payout limitation for any single element of the authorized gambling enterprise simulated. Payouts for bona fide promotional games of chance offered by any person or entity that are not a gambling or ~~liquor~~ alcoholic beverage licensee, are not limited by the payout limits for the authorized gambling enterprise simulated.

(3) through (12) remain the same.

AUTH: 23-5-115, MCA

IMP: 23-5-112, 23-5-115, 23-5-152, MCA

REASON: As indicated in ARM 23.16.125 above.

5. The department proposes to repeal the following rules:

23.16.410 POSSESSION OF DEALER LICENSE

AUTH: 23-5-115, MCA

IMP: 23-5-308, MCA

23.16.411 DEALER LICENSE SPECIFIC TO THE PERSON NAMED THEREON

AUTH: 23-5-115, MCA

IMP: 23-5-308, MCA

REASON: As indicated in ARM 23.16.407 above.

6. 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: Michael L. Fanning, 2550 Prospect Avenue, P.O. Box 201424, Helena, Montana, 59620-1424; telephone (406) 444-1971; fax (406) 444-9157; or e-mail [j.saye@mt.gov](mailto:j.saye@mt.gov) and must be received no later than 5:00 p.m., February 5, 2019.

7. Michael L. Fanning, Department of Justice, has been designated to preside over and conduct this hearing.

8. The department 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 list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. 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.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

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

11. Pursuant to 2-4-302, MCA, the department advises the adoption of testing and approval fees for 50/50 raffle electronic processing systems will require licensed associated gambling businesses to pay a monetary amount for the department's actual testing costs. Testing fees are estimated to cost \$2,000 per system. The cumulative amount for all persons of the new fee is predicted to average \$2,000 annually, since the department does not expect to average more than one application per year or to maintain more than four to five licensees at a given time.

/s/ Hannah Tokerud  
Hannah Tokerud  
Rule Reviewer

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

Certified to the Secretary of State December 11, 2018.