

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

| | | |
|---------------------------------------|---|-----------------------------|
| In the matter of the amendment of |) | NOTICE OF PUBLIC HEARING ON |
| ARM 23.16.101, 23.16.116, |) | PROPOSED AMENDMENT AND |
| 23.16.117, 23.16.118. 23.16.119, |) | REPEAL |
| 23.16.301, 23.16.508, 23.16.1703, |) | |
| 23.16.1704, 23.16.1705, 23.16.1713, |) | |
| 23.16.1714, 23.16.1802, 23.16.1901, |) | |
| 23.16.1904, 23.16.1911, 23.16.1918, |) | |
| 23.16.1920, 23.16.1922, 23.16.1931, |) | |
| and 23.16.3501 pertaining to transfer |) | |
| of interest among licensees, transfer |) | |
| of interest to new owners, shake-a- |) | |
| day games, changes in managers, |) | |
| sports pools and sports tabs, |) | |
| Electronic Player Rewards Systems, |) | |
| and procedure on VGM malfunction |) | |
| and the repeal of ARM 23.16.2115 |) | |
| pertaining to the use of AARS data |) | |
| for player tracking |) | |

TO: All Concerned Persons

1. On November 29, 2021, at 1:30 p.m., the Department of Justice will hold a public hearing in the conference room of the Gambling Control Division building, 2550 Prospect Avenue, Helena, Montana, to consider the proposed 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 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 November 19, 2021, to advise us of the nature of the accommodation that you need. Please contact Michael L. Fanning, Gambling Control Division, Department of Justice, 2550 Prospect Avenue, P.O. Box 201424, Helena, Montana, 59620-1424; telephone (406) 444-1995; or e-mail mikefanning@mt.gov.

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

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

(1) through (3) remain the same.

(4) "Control" means the power to cause or direct management and policies through ownership, contract, or otherwise.

(5) through (15) remain the same.

(16) "Owner" or "owner of an interest" means a person ~~with a right to share in the profits, losses, or liabilities of a gambling operation~~ holding ownership as defined in 23-5-112, MCA. The term "ownership interest" is synonymous with "owner" or "owner of an interest." The term "owner" or "owner of an interest" does not include route operators with a right to share in proceeds from VGMs they have leased to location operators. "Owner" or "owner of an interest" includes:

(a) through (19) remain the same.

(20) "Stranger to the license" means a person who ~~does not own an interest in the licensed gambling operation~~ has not both applied for licensure under Title 23, chapter 5, MCA, and these rules, and been approved by the department to hold an ownership interest in that licensed gambling operation.

(21) through (23) 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,

REASON: The 2021 Legislature enacted SB 49, sponsored by Sen. Mark Blasdel, and signed into law by Gov. Greg Gianforte on April 20, 2021. 2021 Mont. Laws Ch. 259. The bill consolidated into one generally applicable definition the statute and rule references to ownership, control, and the rights of an owner. Similar administrative rules defining ownership and control must be amended to align with those terms' usage in the Gambling Code.

Additionally, the bill significantly altered transfers of ownership interests in a gambling operation. The bill directs separate treatment of ownership transfers among existing owners versus ownership transfers to a new person, unaffiliated with the license – a stranger to the license.

Prior to passage, all transfers of ownership interests had to have prior approval of the Gambling Control Division (GCD). GCD's administrative rules followed that Legislative directive. SB 49 amended 23-5-118, MCA, to require prior approval only when the transfer results in a new person, who has never been investigated in connection with that license, acquiring an ownership interest. Following passage, if both parties to the transfer are already investigated and approved owners of that licensee, prior approval is not needed. The administrative rule on transfers among existing owners, ARM 23.16.116, must be amended to conform and to establish reporting requirements as directed by the amended statute. Further, other rules cross-referencing the former standards of ARM 23.16.116 also must be amended to conform. This statement of reasonable necessity applies to the proposed amendments to ARM 23.16.101, 23.16.116, 23.16.117, 23.16.118, and 23.16.119, which follow.

The bill was effective upon passage and approval.

23.16.116 TRANSFER OF INTEREST AMONG LICENSEES (1) Except as provided in (9) and (10), ~~an ownership interest may not be transferred among existing owners without submitting an amended gambling license application to the department and obtaining department approval prior to the transfer~~ existing owner of a licensed gambling operation may transfer an ownership interest to another existing owner of that same licensed gambling operation without receiving prior Gambling

Control Division approval. Upon the licensee's next license renewal application, the licensee must file with GCD the form(s), information, and records required by the applicable section of this rule.

(2) through (10) remain the same.

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

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

23.16.117 TRANSFER OF INTEREST TO NEW OWNER (1) Except as provided in (7), (8), (9), and (10), an ownership interest may not be transferred to a ~~new owner~~ stranger to the license until a new gambling license application reflecting the proposed transfer is submitted to the department and the department approves the transfer.

(2) through (8) remain the same.

(9) Transfers of ~~ownership~~ control of a licensed gambling operation into a receivership, trust, ~~or~~ an estate mandated by court order, or to an attorney in fact under a power of attorney require an amended application to be filed. The transfer of ownership interest to an estate that results from the death of a licensee may be reported on Form 37.

(a) Under this circumstance, gambling activity may continue pending the outcome of the license investigation if the following documents are submitted and determinations are made:

(i) documentation of the event precipitating the transfer of the licensed gambling operation into a receivership, trust, or estate, e.g., death certificate;

(ii) documents naming/appointing a person to exercise ~~ownership~~ control, e.g., receiver, personal representative, trustee, attorney in fact;

(iii) personal history statement, (Form 10),¹ as that form is described in ARM 23.16.102(3)(b), for the person designated to act in the capacity of a receiver, trustee, or attorney in fact;

(iv) a complete set of fingerprints, Form FD-258 provided by the department, obtained and certified by a local law enforcement agency, the department, or a private security company approved by the department for each person required to complete a personal history statement; and

(v) a copy of the licensee's most recent financial statements or tax returns; and

(vi) the department determines the receiver or attorney in fact is suitable to hold or own a license.

(b) Upon the dissolution or termination of a receivership, trust, ~~or~~ estate, or power of attorney licensed under (9), if ownership interests are distributed to strangers to the license, a new license application must be filed and all applicable rules and procedures must be followed.

(c) If ownership interests are transferred to existing owners following the dissolution of a receivership, trust, or estate, an amended license application must be filed.

(10) remains the same.

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

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

REASON: As noted in the statement of necessity following ARM 23.16.101, some of the amendments to ARM 23.16.117 are required to conform to new definitions of "ownership," "control," and "stranger to the license." Additionally, amendments to this rule to include attorneys in fact are necessary to govern instances where a licensee voluntarily transfers control of a licensed gambling operation through a power of attorney. GCD has encountered instances where an unvetted stranger to the license assumes control of a licensed operation through a power of attorney. In one such disciplinary case, the approved licensee moved out of state and transferred control of the gambling operation to a family member. For many months, that unvetted family member acted as the sole individual in control of the operation, yet that person had never been investigated and approved. The rule amendment will allow temporary transfers of control through a power of attorney, but the person who assumes that role must now report their role and undergo a limited review. That review will be much like reviews which have long been expected of receivers, trustees, and personal representatives of estates.

23.16.118 ESCROW REQUIRED (1) Except as provided in (3), money or any other thing of value constituting consideration for transferring an interest in a licensed gambling operation to a stranger to the license may not be paid, received, or used until the provisions of ARM ~~23.16.116~~ or 23.16.117 have been met. However, the funds may be placed in escrow pending compliance with these provisions.

(2) and (3) remain the same.

AUTH: 23-5-115, MCA

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

23.16.119 PARTICIPATION IN OPERATIONS (1) Except as provided in ARM 23.16.509, a ~~person~~ stranger to the license 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

23.16.301 SHAKE-A-DAY GAMES (1) All shake-a-day games are subject to these general rules:

(a) only establishments licensed for the sale of alcoholic beverages to be consumed on the premises may offer shake-a-day games;

(a) through (f) remain the same but are renumbered (b) through (g).

(2) Cash in a shake-a-day pot is subject to the following ~~rules~~ provisions:

(a) ~~a gambling operator~~ the establishment may contribute cash to initially fund the pot, but that contribution may not be removed to reimburse the licensee;

(b) ~~a gambling operator~~ the establishment may not remove money from a pot for any reason, including reimbursing the licensee for noncash prizes such as drinks or merchandise awarded to players;

(c) ~~a gambling operator~~ the establishment may not cap the total cash in a pot, which must be allowed to grow until a winner is declared;

(d) the pot collected in each shake-a-day game must be kept separate from other shake-a-day pots and the ~~gambling operator's~~ establishment's other cash;

(e) ~~a gambling operator~~ the establishment may secure a pot on the premises, but the cash must be available to all employees and immediately paid to the winning player; and

(f) remains the same.

(3) Each ~~gambling operator~~ establishment offering a shake-a-day game must clearly post the rules of the house games, which must include:

(a) through (d) remain the same.

AUTH: 23-5-115, MCA

IMP: 23-5-160, MCA

REASON: This amendment is necessary to correct an error inadvertently introduced in the GCD's 2019 rule update. The statute implemented by this rule, 23-5-160, MCA, allows shake-a-day games in establishments licensed for on-premises alcohol consumption whether licensed for gambling or not. The 2019 amendments to this rule incorrectly referenced only gambling operators. These amendments conform the rule to the statute and clarify there is one rule for all shake-a-day games whether the establishment holds a gambling operator license or not.

23.16.508 CHANGES IN MANAGERS, OFFICERS, AND DIRECTORS

(1) Except as provided in (2) and ARM 23.16.510, any change in location managers, officers, or directors must be reported to the department within 30 days of the date of change.

(2) Any gambling operator holding an alcoholic beverage license issued under 16-4-201(8), MCA, to military clubs, veterans' organizations, or fraternal organizations must report any change in officers or directors no later than the licensee's next license renewal application.

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

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

IMP: 16-4-414, 23-5-176, 23-5-177, MCA

REASON: This amendment is necessary to avoid burdening veterans' and fraternal organizations. Unlike for-profit, commercial establishments, veterans' and fraternal organizations' officers and directors are typically volunteer members. In GCD's experience, there is predictable turnover among these officers and directors which is often unreported or reported after the current 30-day deadline. These reporting omissions expose the organizations to fines. Commonly, the organizations' day-to-day operations and regulatory compliance are entrusted to designated location managers. As the individual charged with general oversight of

the gambling operation and tasked with ensuring compliance with gambling laws, a location manager must be reported, investigated, and approved quickly. Oftentimes, this urgency is not shared by the volunteers on a veterans' or fraternal's board of directors. Reporting changes in officers and directors through a license renewal application will sufficiently update GCD records without exposing the organizations to fines for reporting oversights. Consequently, GCD proposes to amend this rule to avoid technical, time-based violations with no clear regulatory objective.

23.16.1703 SALE OF SPORTS POOL CHANCES (1) The total cost of a chance ~~shall not exceed \$100 per in a sports event, or \$100 per in a sports event for a series sports pool as described in ARM 23.16.1705(3)(b), and is unlimited.~~ The total cost for each chance must be paid in full and in cash at the time the chance is selected.

(2) through (5) remain the same.

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

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

REASON: The 2021 Legislature enacted HB 193, sponsored by Rep. Jimmy Patelis, and signed into law by Gov. Greg Gianforte on March 25, 2021. 2021 Mont. Laws Ch. 75. Formerly, there were dollar caps on the entry charges for sports pools and sports tabs and a cap on the total amount paid to winners. HB 193 did away with those caps. These amendments are needed to conform the existing administrative rules to the revised statute, 23-5-503, MCA. The bill is effective on October 1, 2021. 1-2-201, MCA. This statement of reasonable necessity applies to the proposed amendments to ARM 23.16.1704, 23.16.1705, 23.16.1713, and 23.16.1714, which follow.

23.16.1704 DETERMINATION OF SPORTS POOL WINNERS - PRIZES

(1) remains the same.

(2) The prizes awarded to the winner or winners of a sports pool may be cash or merchandise ~~but must not exceed a total value of \$2,500 per sports event.~~

(a) through (4) remain the same.

AUTH: 23-5-115, MCA

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

23.16.1705 AUTHORIZED SPORTS POOLS (1) through (3)(d)(ii) remain the same.

~~(iii) The pool must be designed so that the total of each participant's wager(s) does not exceed \$100, the total value of all prizes equals the total of all wagers, and the total value of all prizes awarded does not exceed \$2,500.~~

(iv) remains the same but is renumbered (iii)

(e) through (g) remain the same.

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

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

23.16.1713 PURCHASE AND SALE OF SPORTS TABS BY SPONSOR - LICENSURE (1) and (2) remain the same.

(3) The total cost of each sports tab on the same sports tab card must be identical and may not exceed \$25. A participant shall pay cash for the sports tab at the time the tab is selected.

(4) remains the same.

AUTH: 23-5-115, 23-5-178, MCA
IMP: 23-5-178, 23-5-502, 23-5-503, MCA

23.16.1714 SPORTS TAB GAME PRIZES (1) For the purposes of this rule, "cost of the sports tabs" means an amount that is equal to the amount paid by a participant for a single sports tab multiplied by 100.

(2) remains the same, but is renumbered (1).

(3) (2) Except as provided in (5)(4), a sponsor shall pay to the winners of a sports tab game at least 90% of the cost of the sports tabs. The sponsor may retain up to 10% of the cost of the sports tabs.

(4) (3) The cost to participate in a sports tab game is unlimited and The the total value of all prizes awarded in a sports tab game may not exceed \$2,500 is unlimited. Prizes may be in cash or merchandise, or a combination of cash and merchandise. If merchandise is awarded, the purchase price paid for the merchandise is considered to be the value of the prize. Except as provided in (5)(4), if the value of the merchandise is less than 90% of the cost of the sports tabs the difference must be awarded to the winners in cash.

(5) and (6) remain the same but are renumbered (4) and (5).

AUTH: 23-5-115, MCA
IMP: 23-5-501, 23-5-502, 23-5-503, MCA

23.16.1802 DEFINITIONS (1) through (4) remain the same.

(5) "CTVS" (cash ticket validation system) means a stand-alone system that electronically acquires information from VGMS solely for the purpose of validating cash ticket vouchers.

(6) through (8) remain the same.

(9) "EPRS" (electronic player rewards system) means a stand-alone system that electronically acquires information from VGMS to be used for any purpose authorized by Title 23, chapter 5, MCA.

(9) through (30) remain the same but are renumbered (10) through (31).

AUTH: 23-5-115, 23-5-602, 23-5-621, MCA
IMP: 23-5-111, 23-5-112, 23-5-115, 23-5-151, 23-5-602, 23-5-603, 23-5-607, 23-5-608, 23-5-610, 23-5-611, 23-5-612, 23-5-621, 23-5-637, MCA

REASON: The 2021 Legislature enacted HB 197, sponsored by Rep. Edward Buttrey, and signed into law by Gov. Greg Gianforte on March 26, 2021. 2021 Mont. Laws Ch. 98. Montana statutes enacted in 1999 authorized computer-

driven interactive accounting and reporting systems to automate certain recordkeeping, and tax accounting and reporting functions for video gambling machines. 23-5-637, MCA. The Gambling Control Division was given express rulemaking authority to implement these automated accounting and reporting systems (AARS). 23-5-621, MCA. That statute required GCD to adopt a rule providing, "the data made available as a result of an approved automated accounting and reporting system may not be used by licensees for player tracking purposes." 23-5-621(1)(e)(i), MCA. As directed by the Legislature, in 2006 GCD adopted ARM 23.16.2115 to prohibit the use of AARS data for player tracking purposes. Over time, GCD adopted other rules consistent with that prohibition.

HB 197 reversed 23-5-637, MCA, and allows the use of AARS data for player tracking purposes. Consequently, ARM 23.16.2115 now must be repealed and eight other existing rules must be amended to conform to the new statutes. This statement of reasonable necessity applies to the proposed amendments to ARM 23.16.1901, 23.16.1911, 23.16.1918, 23.16.1920, 23.16.1922, and 23.16.1931 and to the proposed repeal of ARM 23.16.2115.

HB 197, 2021 Mont. Laws Ch. 98, was effective July 1, 2021.

23.16.1901 GENERAL SPECIFICATIONS OF VGMS (1) through (2) remain the same.

(3) When the department finds that any EPRS, CTVS, AARS, VGM, VGM component, or game title does not comply with statutes and rules applicable at the time of approval, or its actual operation differs from its intended and approved functioning, the department may require game title(s) to be disabled, suspend or revoke a permit, or revoke approval of the EPRS, CTVS, AARS, VGM, or VGM component. The department may also require game title(s) to be disabled, suspend or revoke the permits, or revoke approval of models of a an EPRS, CTVS, AARS, VGM, or VGM component similar to one the department finds noncompliant.

AUTH: 23-5-115, 23-5-602, 23-5-621, MCA

IMP: 23-5-136, 23-5-602, 23-5-603, 23-5-608, 23-5-610, 23-5-621, 23-5-637, MCA

23.16.1904 PROCEDURE ON DISCOVERY OF SUSPECTED OR CONFIRMED VGM MALFUNCTION (1) through (3) remain the same.

(4) VGM manufacturers must report software or hardware malfunctions on a completed Form 50A supported by all required documents. The Form 50A and supporting documents must be submitted to the department within 24 hours of the malfunction being reported to, or identified by, the VGM manufacturer.

(4) and (5) remain the same but are renumbered (5) and (6).

AUTH: 23-5-115, 23-5-608, 23-5-621, MCA

IMP: 23-5-602, 23-5-607, 23-5-608, 23-5-616, 23-5-621, MCA

REASON: GCD issued this rule in 2018 based on incidents where gambling operators hesitated to pay a player when the operator believed a ticket voucher was the result of a VGM malfunction. The rule has remained unchanged since 2018.

Since then, GCD has learned of instances where a manufacturer of a VGM – not operators offering the VGM for play – discovered a "bug" or software malfunction. Because the rule was limited to operators, manufacturers had no duty to report known malfunctions. Such malfunctions are not uncommon. Since early 2020, manufacturers have self-reported a number of such malfunctions. Manufacturers submitted those reports based only on GCD's reporting directive in VGM approval letters. Other malfunctions likely go unreported because no rule compels reporting. This rule amendment is necessary to protect players by requiring both gambling operators and manufacturers to report malfunctions.

23.16.1911 INFORMATION TO BE PROVIDED TO THE DEPARTMENT

(1) To ensure a an EPRS, VGM, AARS, or CTVS complies with the act and these rules, the department may require a licensed manufacturer, ~~or~~ accounting system vendor, or associated gambling business to supply information, including but not limited to:

(a) through (l) remain the same.

(m) additional information to be provided for an EPRS, AARS, or CTVS upon request.

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

IMP: 23-5-607, 23-5-621, 23-5-631, 23-5-637, MCA

23.16.1918 TESTING FEES (1) Each person submitting a an EPRS, VGM, an AARS, CTVS, or a modification to an approved EPRS, VGM, or an AARS, or CTVS for testing and department approval must:

(a) be licensed as a manufacturer, ~~and/or~~ accounting system vendor, or associated gambling business within the state of Montana;

(b) at the time of submission deposit with the department a sum of money to begin testing. This sum is to be as follows:

(i) VGMs, \$10,000;

(ii) CTVS, \$5,000;

(iii) AARS, \$15,000;

(iv) EPRS, \$5,000;

~~(iv)~~ (v) modification to an approved EPRS, VGM, CTVS, or AARS, \$1,000.

(2) and (3) remain the same.

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

IMP: 23-5-631, 23-5-637, MCA

23.16.1920 EPRS, AARS, CTVS, AND VGM HARDWARE AND SOFTWARE SPECIFICATIONS (1) through (3) remain the same.

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

IMP: 23-5-603, 23-5-621, 23-5-631, 23-5-637, MCA

23.16.1922 CTVS TESTING AND RESTRICTIONS (1) A CTVS is associated equipment that electronically acquires information and data from a VGM

for the sole purpose of validating the authenticity of a ticket voucher presented for payment.

(2) through (2)(c) remain the same.

(d) all electronically acquired information must be limited to the sole purpose of validating ticket vouchers ~~and may not include player tracking.~~

(3) and (3)(a) remain the same.

(b) before acquiring a CTVS system, every gambling operator must complete a CTVS use disclosure form (Form 33) supplying information to the department, which must include the gambling operator's confirmation:

(i) only AARS enabled VGMs will use a CTVS; and

(ii) the operator's use of electronically acquired information:

(A) will be limited to ticket voucher validation for VGMs permitted to the gambling operator's individual licensed premises; and

(B) will be restricted to VGM ticket voucher validation; ~~and~~

~~(C) will not be used for player tracking purposes.~~

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

IMP: 23-5-602, 23-5-621, 23-5-625, 23-5-631, MCA

23.16.1931 INSPECTION AND SEIZURE (1) The department has the right during the licensee's normal business hours to inspect ~~an~~ any EPRS, AARS, or CTVS, or any VGM. Such right of inspection includes immediate access to each EPRS, AARS, CTVS, or VGM and unlimited inspection of all VGM parts. The department may immediately seize and remove any EPRS, AARS, CTVS, or VGM or device that violates state law or these rules.

(2) Given reasonable cause, the department may remove ~~an~~ any EPRS, AARS, CTVS, or VGM or parts from a VGM for laboratory testing and analysis.

(3) The department may seal any EPRS, AARS, CTVS, or VGM left on the licensee's premises pending the department's investigation. Breaking or removing the department's seal will subject the licensee to seizure of the entire EPRS, AARS, CTVS, or VGM and suspension or revocation of any permit or license issued by the department.

AUTH: 23-5-115, 23-5-602, 23-5-621, MCA

IMP: 23-5-113, 23-5-602, 23-5-603, 23-5-608, 23-5-611, 23-5-613, 23-5-621, MCA

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

(3) Any devices, machines, instruments, apparatuses, contrivances, schemes, activities or enterprises that simulate the following games, variations of the following games, or in any manner incorporate aspects of the following games are prohibited and shall not be approved by the department:

(a) banking card games, such as blackjack, twenty-one, jacks or better, baccarat, or chemin de fer;

(b) dice games, ~~such~~ known as craps, hazard, or chuck-a-luck;

(c) sports betting other than horse racing, sports pools as authorized by law, or as provided in (9); or

(d) table games, such as roulette or faro.

(4) through (7) remain the same.

(8) No department approval is required for ticket or card devices described under 23-5-112(19)(a), MCA, and promotional wheel devices as defined herein, so long as such devices are bona fide promotional games of chance; and the ticket or card devices described under 23-5-112(19)(a), MCA, comply with (7)(f) of this rule; and promotional wheel devices comply with (7)(e), (f), and (g) of this rule. For the purposes of this rule, a promotional wheel device is defined as one or more vertically constructed circular frames or disks, displaying various symbols, such as numbers or pre-identified sectors, that is freely spun for the random selection of a symbol as determined by a permanently stationary mark for selecting the particular symbol when the wheel stops spinning.

(9) through (12) remain the same.

AUTH: 23-5-115, MCA

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

REASON: The 2021 Legislature enacted HB 548, sponsored by Rep. Jimmy Patelis, and was signed into law by Gov. Greg Gianforte on April 11, 2021. 2021 Mont. Laws Ch. 180. Formerly, the Gambling Code generally prohibited dice games with exceptions for shake-a-day and shake for music. The administrative rule controlling promotional games of chance was constructed similarly and generally disallowed dice-based promotions.

HB 548 reversed the general prohibition on dice games and now generally authorizes dice games played by patrons on premises licensed for on-premises alcoholic beverage consumption. Under the new law, three specific dice games are prohibited. To conform with the new statute, the promotional games of chance rule must be amended to generally authorize dice promotions with the exception of the three prohibited games.

The bill is effective on October 1, 2021. 1-2-201, MCA.

Section (8) must be amended to correct an inaccurate cross-reference within the definitional statute. Amendments adding paragraphs to 23-5-112, MCA, in the 2019 Legislative Session (SB 25), renumbered the illegal gambling device definition from (19) to (21).

4. The rule proposed to be repealed is as follows:

23.16.2115 AUTOMATED ACCOUNTING AND REPORTING SYSTEM
DATA NOT TO BE USED FOR PLAYER TRACKING

AUTH: 23-5-621, MCA

IMP: 23-5-621, MCA

REASON: See REASON for ARM 23.16.1802.

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: Michael L. Fanning, 2550 Prospect Avenue, P.O. Box 201424, Helena, Montana, 59620-1424; or e-mail mikefanning@mt.gov and must be received no later than 5:00 p.m., December 29, 2021.

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

7. 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 5 above or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were contacted by e-mail and United States mail on June 15, 2021, and by email on September 30, 2021.

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

10. Pursuant to 2-4-302, MCA, the department advises the adoption of testing and approval fees for electronic player rewards systems (EPRS) under ARM 23.16.1918 will require licensees to pay the same hourly testing fee GCD charges for testing other devices or systems: \$130 per hour. The department does not expect to average more than one EPRS application per year. Based on its experience with testing other devices and systems, EPRS testing fees will approximate \$5,000 per EPRS application. The cumulative annual amount of the new fee for all persons is predicted to average \$5,000.

/s/ Derek Oestreicher
Derek Oestreicher
Rule Reviewer

/s/ Austin Knudsen
Austin Knudsen
Attorney General
Department of Justice

Certified to the Secretary of State October 26, 2021.