

1 SENATE BILL NO. 102

2 INTRODUCED BY M. CUFFE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING STATE LOTTERY AND SPORTS
5 WAGERING LAWS RELATED TO SALES AGENT COMMISSIONS; EXEMPTING SALES AGENTS'
6 COMMISSIONS SET BY THE STATE LOTTERY AND SPORTS WAGERING COMMISSION FROM RULE
7 REQUIREMENTS UNDER THE MONTANA ADMINISTRATIVE PROCEDURE ACT; REVISING RULEMAKING
8 AUTHORITY; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 2-4-102, 23-7-202, AND 23-
9 7-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY
10 DATE."

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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 **Section 1.** Section 2-4-102, MCA, is amended to read:

15 **"2-4-102. Definitions.** For purposes of this chapter, the following definitions apply:

16 (1) "Administrative rule review committee" or "committee" means the appropriate committee
17 assigned subject matter jurisdiction in Title 5, chapter 5, part 2.

18 (2) (a) "Agency" means an agency, as defined in 2-3-102, of state government, except that the
19 provisions of this chapter do not apply to the following:

20 (i) the state board of pardons and parole, which is exempt from the contested case and judicial
21 review of contested cases provisions contained in this chapter. However, the board is subject to the remainder
22 of the provisions of this chapter.

23 (ii) the supervision and administration of a penal institution with regard to the institutional
24 supervision, custody, control, care, or treatment of youth or prisoners;

25 (iii) the board of regents and the Montana university system;

26 (iv) the financing, construction, and maintenance of public works;

27 (v) the public service commission when conducting arbitration proceedings pursuant to 47 U.S.C.
28 252 and 69-3-837.

1 (b) The term does not include a school district, a unit of local government, or any other political
2 subdivision of the state.

3 (3) "ARM" means the Administrative Rules of Montana.

4 (4) "Contested case" means a proceeding before an agency in which a determination of legal
5 rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term
6 includes but is not restricted to ratemaking, price fixing, and licensing.

7 (5) (a) "Interested person" means a person who has expressed to the agency an interest
8 concerning agency actions under this chapter and has requested to be placed on the agency's list of interested
9 persons as to matters of which the person desires to be given notice.

10 (b) The term does not extend to contested cases.

11 (6) "License" includes the whole or part of an agency permit, certificate, approval, registration,
12 charter, or other form of permission required by law but does not include a license required solely for revenue
13 purposes.

14 (7) "Licensing" includes an agency process respecting the grant, denial, renewal, revocation,
15 suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

16 (8) "Party" means a person named or admitted as a party or properly seeking and entitled as of
17 right to be admitted as a party, but this chapter may not be construed to prevent an agency from admitting any
18 person as a party for limited purposes.

19 (9) "Person" means an individual, partnership, corporation, association, governmental subdivision,
20 agency, or public organization of any character.

21 (10) "Register" means the Montana Administrative Register.

22 (11) (a) "Rule" means each agency regulation, standard, or statement of general applicability that
23 implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice
24 requirements of an agency. The term includes the amendment or repeal of a prior rule.

25 (b) The term does not include:

26 (i) statements concerning only the internal management of an agency or state government and
27 not affecting private rights or procedures available to the public, including rules implementing the state
28 personnel classification plan, the state wage and salary plan, or the statewide accounting, budgeting, and

1 human resource system;

2 (ii) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

3 (iii) rules relating to the use of public works, facilities, streets, and highways when the substance of
4 the rules is indicated to the public by means of signs or signals;

5 (iv) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when
6 there is a statutory requirement for the publication of the rules and rules adopted annually or biennially relating
7 to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of
8 the rules is indicated to the public by means of signs or signals;

9 (v) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in
10 accordance with 2-4-306 and must be published in the ARM; ~~or~~

11 (vi) game parameters approved by the state lottery and sports wagering commission relating to a
12 specific lottery game. This subsection (11)(b)(vi) does not exempt generally applicable policies governing the
13 state lottery that are otherwise subject to the Montana Administrative Procedure Act; or

14 (vii) policies relating to sports wagering sales agents' commissions prescribed by the state lottery
15 and sports wagering commission.

16 (12) (a) "Significant interest to the public" means agency actions under this chapter regarding
17 matters that the agency knows to be of widespread citizen interest. These matters include issues involving a
18 substantial fiscal impact to or controversy involving a particular class or group of individuals.

19 (b) The term does not extend to contested cases.

20 (13) "Small business" means a business entity, including its affiliates, that is independently owned
21 and operated and that employs fewer than 50 full-time employees.

22 (14) "Substantive rules" are either:

23 (a) legislative rules, which if adopted in accordance with this chapter and under expressly
24 delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted
25 are invalid; or

26 (b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under
27 express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law.

28 (15) "Supplemental notice" means a notice that amends the proposed rules or changes the timeline

1 for public participation."

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3 **Section 2.** Section 23-7-202, MCA, is amended to read:

4 **"23-7-202. Powers and duties of commission.** The commission shall:

5 (1) establish and operate a state lottery;

6 (2) determine policies for the operation of the state lottery, supervise the director and the staff, and

7 meet with the director at least once every 3 months to make and consider recommendations, set policies,

8 determine types and forms of lottery and sports wagering games to be operated by the state lottery, and

9 transact other necessary business;

10 (3) maximize the net revenue paid to the state general fund and to the Montana STEM scholarship
11 program special revenue account under 23-7-402 and ensure that all policies and rules adopted further revenue
12 maximization;

13 (4) subject to 23-7-402(1), determine the percentage of the money paid for tickets, chances,
14 wagers, or bets to be paid out as prizes;

15 (5) determine the price of each ticket, chance, wager, or bet and the number and size of prizes;

16 (6) provide for the conduct of drawings of winners of lottery games and sports wagering;

17 (7) carry out, with the director, a continuing study of the state lottery in Montana and other states'
18 lotteries and sports wagering operations to make the state lottery more efficient, profitable, and secure from
19 violations of the law;

20 (8) study and may enter into agreements with:

21 (a) other lottery states and countries to offer lottery games; or

22 (b) an association for the purpose of participating in multistate lottery games or games offered in
23 other states and other countries;

24 (9) prepare quarterly and annual reports on all aspects of the operation of the state lottery,
25 including but not limited to types of games, gross revenue, prize money paid, operating expenses, net revenue
26 to the state, contracts with gaming suppliers, and recommendations for changes to this part, and deliver a copy
27 of each report to the governor, the department of administration, the legislative auditor, and to the legislature in
28 accordance with 5-11-210; and

- 1 (10) adopt rules relating to lottery and sports wagering ~~and sales agents' commissions~~ and any
 2 other rules necessary to carry out this part, including but not limited to:
- 3 (a) acceptance of wagers on a sports event or a series of sports events;
 4 (b) the type of wagering tickets that may be used;
 5 (c) method of issuing tickets;
 6 (d) method of accounting and associated reporting minimums to be used by sales agent;
 7 (e) sales agent licensing requirements and prohibitions;
 8 (f) method of age verification;
 9 (g) player exclusion requirements;
 10 (h) protections for an individual placing a wager;
 11 (i) contribution and participation in responsible gaming and consumer protection activities and
 12 programs; and
 13 (j) ensuring game integrity through monitoring and reporting of suspicious betting activity and
 14 equipment tampering; and
- 15 (11) prescribe policies relating to sports wagering sales agents' commissions without conducting
 16 rulemaking under Title 2, chapter 4, but otherwise meet the requirements of this chapter."
 17

18 **Section 3.** Section 23-7-301, MCA, is amended to read:

19 **"23-7-301. Sales agents -- licenses.** (1) Lottery tickets, chances, wagers, or bets may be sold only
 20 by a sales agent licensed by the director in accordance with this section.

21 (2) The commission shall by rule determine the places at which state lottery games and sports
 22 wagering tickets, chances, wagers, or bets may be sold.

23 (3) (a) Before issuing a license, the director shall consider:

24 (i) the financial responsibility and security of the applicant and the applicant's business or activity;

25 (ii) the accessibility of the applicant's place of business or activity to the public; and

26 (iii) the sufficiency of existing licenses to serve the public convenience and the volume of the
 27 expected sales.

28 (b) A person under 18 years of age may not sell lottery tickets, chances, wagers, or bets.

1 (c) A license as an agent to sell lottery tickets, chances, or wagers and bets may not be issued to
2 any person to engage in business exclusively as a lottery ticket, chance, or sports wagering sales agent.

3 (d) A license as an agent to sell wagers or bets may not be issued to any professional or collegiate
4 sports:

5 (i) athlete;

6 (ii) coach;

7 (iii) assistant coach;

8 (iv) team staff;

9 (v) team owner;

10 (vi) referee; or

11 (vii) employee.

12 (4) The director may issue temporary licenses upon conditions that the director considers
13 necessary.

14 (5) (a) Two license types are available:

15 (i) lottery only; and

16 (ii) sports wagering only.

17 (b) License applicants shall complete the application process pursuant to this chapter and
18 corresponding administrative rules.

19 (6) The director may require a bond from any licensed agent in an amount provided in the
20 commission's rules and may purchase a blanket bond covering the activities of licensed agents.

21 (7) A licensed agent shall display the license or a copy of the license conspicuously in accordance
22 with the commission's rules.

23 (8) A license is not assignable or transferable.

24 (9) An employee of a sales agent may not be required to sell lottery game tickets, chances, or
25 wagers or bets if the sale is against the employee's religious or moral beliefs.

26 (10) Sales agents are entitled to a commission of no more than 10% of the face value of tickets and
27 chances that they purchase from the lottery and do not return and no more than 10% of the face value of a
28 wager or bet. However, to further the sale of lottery products and sports wagering, the state lottery and sports

1 wagering commission may, ~~adopt rules providing under 23-7-202(11),~~ establish policies that provide additional
2 commissions to sales agents based on incremental sales. Commissions may not come from that part of all
3 gross revenue that is net revenue and is paid to the general fund. The commissions are statutorily appropriated,
4 as provided in 17-7-502, to the lottery.

5 (11) Each sales agent shall keep a complete and up-to-date set of records and accounts fully
6 showing the agent's sales and provide it for inspection upon request of the commission, the director, the
7 department of administration, the office of the legislative auditor, or the office of the attorney general.

8 (12) Sales agents may pay the state lottery only by check, bankdraft, electronic funds transfer, or
9 other recorded, noncash, financial transfer method as determined by the director.

10 (13) A license may be suspended or revoked for failure to maintain the license qualifications
11 provided in subsection (3) or for violation of any provision of this chapter or a commission rule. Prior to
12 suspension or revocation, the licensee must be given notice and an opportunity for a hearing."
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14 NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.
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16 NEW SECTION. Section 5. Retroactive applicability. [This act] applies retroactively, within the
17 meaning of 1-2-109, to policies prescribed by the state lottery and sports wagering commission concerning
18 sports wagering sales agents' commissions on or after January 15, 2022.
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