

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I and amendment of ARM 42.12.145 and 42.13.103 pertaining to access control systems (ACS)) NOTICE OF ADOPTION AND) AMENDMENT))

TO: All Concerned Persons

1. On September 20, 2019, the Department of Revenue published MAR Notice No. 42-1005 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1622 of the 2019 Montana Administrative Register, Issue Number 18.

2. On October 15, 2019, a public hearing was held to consider the proposed adoption and amendment. No proponents were present and no proponent oral testimony was received. Neil Peterson of the Gaming Industry Association of Montana (GIA) appeared and provided oral comments as an opponent. The department received no written comments in support or opposition.

3. The department adopts New Rule I (42.13.1106) and amends ARM 42.12.145 and 42.13.103 as proposed

4. The department has thoroughly considered the comments received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: Mr. Peterson made several comments regarding the passage of Senate Bill 119 (SB 119) by the 2019 Montana Legislature, such as simplicity of the bill, purported discussions between members of industry, the department, and the Legislature that led to amendments, fiscal impact, and the final form of the bill as enacted. Mr. Peterson comments that SB 119 is a simple piece of legislation that addresses safety and security for licensees and the public for casinos off the beaten path.

RESPONSE 1: The department attended the 2019 legislative committee hearings for SB 119 and is familiar with the intent of this legislation. The department agrees with Mr. Peterson that the bill was amended several times during the legislative process.

COMMENT 2: Mr. Peterson commented that during SB 119's legislative process, the requirement for a form for a licensee to complete and the corresponding approval of the ACS by the department and local law enforcement was amended to that of licensee notification to both agencies. These changes eliminated costs to the department in the creation and approval of an application. Mr. Peterson asks why the department is creating paperwork and procedural hoops that are not necessary

or contemplated under SB 119, when an email to the department and local law enforcement should suffice.

RESPONSE 2: Through the legislative process, SB 119 was amended to remove the requirement that a licensee apply to the department for approval of the use of an ACS and the corresponding requirement that the department develop an application form for the licensee to request the use of an ACS. The final amended bill only requires licensee notification to the department and local law enforcement and also grants the department rulemaking authority. Using this authority, the department proposed that licensees wishing to utilize an ACS notify the department on a department-created notification form. The department has created a one-page notification form, at minimal cost, which it will adopt to require minimal, necessary information in order to process the notification and update systems.

COMMENT 3: Mr. Peterson comments that under New Rule I, the department has established a new violation type and is setting up licensees for a paperwork violation or a violation of not timely notifying the department in New Rule I. Mr. Peterson asks how the department came up with the three-day notification in New Rule I(1) and how will the department enforce New Rule I.

RESPONSE 3: ARM 42.13.101 provides licensees must conduct their premises in compliance with all Montana alcoholic beverage laws and rules. Failure to comply with the requirements of Montana law or department rule may subject the licensee to administrative action. See 16-4-406, MCA. As such, the department does not agree that it has established a new violation type. Instead, the Legislature has created new requirements under Montana law. Failure to comply with these statutory requirements may result in administrative action, so to place licensees on notice of the potential ramifications for failure to comply with the notification requirements, the department has proposed New Rule I(3) to outline instances where a licensee may be subject to administrative action.

Licensees now have a statutory requirement to notify the department prior to implementing an ACS. SB 119 did not address how soon the licensee must provide the notice. Three days prior notice was proposed as this allows enough time for the department to process the notice and notify the Department of Justice, Gambling Control Division. As with other violations alleged under the Montana Alcoholic Beverage Code, enforcement of the notification requirement depends on the facts of the case.

COMMENT 4: Mr. Peterson commented that New Rule I(3) references that a licensee is in violation of the rule if they do not provide "immediate access" to the premises as required in 16-6-103, MCA. What passage of time is immediate access?

RESPONSE 4: The department directs Mr. Peterson to 16-6-103(4)(b), MCA, amended by SB 119, which provides a definition for "immediate access." The department agrees with Mr. Peterson that the definition does not state a specific

amount of time, but the department cannot respond beyond its observation that the definition contemplates authorities being "unreasonably denied access to the premises." As the determination of whether an ACS provides "immediate access" requires the consideration of the specific facts and circumstances of each instance, the specific passage of time prior to access being granted to the department or local law enforcement may vary between each specific scenario. As such, the department declines the request to set forth a specific period of time by rule.

COMMENT 5: Mr. Peterson commented that the department should discontinue its adoption of the notification form and remove the proposed process that was not contemplated under SB 119.

RESPONSE 5: The department disagrees for the reasons contained in its responses and adopts the rule as originally proposed. SB 119 requires department notification to implement and cease using an ACS. The department's one-page form for this notification process is a reasonable request that does not put an undue burden on the licensee. The department also refers Mr. Peterson to Response 2.

COMMENT 6: As a part of the GIA's general comments, Mr. Peterson commented that the Montana Tavern Association (MTA) was in support of the GIA's comments in opposition to this rulemaking.

RESPONSE 6: The department acknowledges Mr. Peterson's statement that the MTA was in support of the GIA's comments. However, no co-authored, written comments were provided by the GIA and MTA, and no MTA representative was present at the October 15 rules hearing. Furthermore, no separate written comments were provided by MTA. The department cannot respond or assume the MTA's position regarding the proposed rulemaking absent written or personal, oral comments or testimony. The department responded to the GIA's comments in all its responses.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Gene Walborn
Gene Walborn
Director of Revenue

Certified to the Secretary of State November 26, 2019.