



ADMINISTRATIVE RULES OF MONTANA



23.16.120 LOANS AND OTHER FORMS OF FINANCING

- (1) Except as provided in (4), (5), (6), and (7), if a gambling licensee or license applicant proposes to acquire a loan or other forms of financing from a noninstitutional source for use in his licensed gambling operation or grant a security interest to a noninstitutional source, the department must approve the contract or security interest transfer before any funds from the loan or financing may be received or expended by the licensee or license applicant and before the security interest may be transferred.
- (2) Except as provided in (4) and (5), a gambling licensee proposing to lend money to or acquire a security interest from, another gambling licensee must receive written confirmation of department approval of the loan, or security interest transfer before any funds from the loan may be transferred to or expended by the borrower licensee and before the security interest may be transferred.
- (3) All licensees who propose to acquire loans or grant security interests in their licensed gambling operation, must notify the department in writing prior to acquiring the loan from a noninstitutional source, or transferring a security interest to a noninstitutional source. The notice, which is to be signed under oath, must include:
 - (a) the names and addresses of all parties to the loan or transfer;
 - (b) the amount and source of the loan funds or amount and source of the funds used to acquire the security interest;
 - (c) the nature and amount of the security provided for the loan or security interest;
 - (d) the purpose of the loan or transfer of the security interest.
- (4) Prior department approval is not required on loans made to gambling operator licensees from route operators for the purpose of establishing a video gambling machine change bank (pool of funds out of which the operator can make change and pay out prizes on valid video gambling machine ticket vouchers) under the following conditions:
 - (a) the route operator submits a list of licensed gambling operators for which he will be providing a change bank loan and the amount of each change bank;
 - (b) the route operator enters into a written agreement with the gambling operator, signed by both parties, providing notification to the gambling operator that the loan proceeds may only be used to make change or to pay out prizes on valid video gambling machine ticket vouchers and that the use of the proceeds for any other purpose is a violation of the gambling laws and rules;

- (c) at least twice each month, the route operator must reconcile the amount of prizes paid out with the cash remaining in the change bank. If the amount of prizes paid out cannot be reconciled with the cash remaining in the change bank, the route operator must analyze and document the difference. Any material differences must be immediately reported to the department. (For the purposes of this rule, material difference means any amount greater than 5% of the value of the change bank loan or \$100, whichever is less.) A record of the reconciliations and analysis of material differences must be maintained for a minimum of 12 full quarters from the previous quarterly tax return due date; and
 - (d) failure to maintain adequate records or notify the department of material differences and investigations findings will subject the route operator to administrative action.
- (5) Prior department approval is not required on loans made between closely related licensed operators under the following conditions:
 - (a) both licensed operators must have the same majority ownership. For the purposes of this rule the "same majority ownership" means the same individual or group of individuals owning a greater than 50% interest in both licensed operations;
 - (b) the operators submit a list of operations to which loans may be made and from which loans may be received;
 - (c) the borrower complies with (3);
 - (d) the borrower and lender's financial records accurately reflect the transaction as a loan payable and receivable. Any balance due upon renewal not previously reported on license renewal forms must also be reported on the license renewal application; and
 - (e) failure to maintain adequate records or notify the department of material differences will subject the licensees to administrative action.
- (6) Prior department approval is not required for accounts payable incurred for the purpose of acquiring nongambling inventories, supplies and other materials or equipment under the following conditions:
 - (a) the payable does not require the transfer of a security interest in any assets of the licensed operation other than the product(s) purchased;
 - (b) the terms of repayment are of a short term nature, less than one year;
 - (c) repayment is due the seller of the products;
 - (d) the sale of such products is in the seller's normal course of business;
 - (e) a copy of the loan agreement or, in the case of a transfer of a security interest, the agreement precipitating the transfer, and a copy of the agreement to transfer the security interest or uniform commercial code document filed with the Secretary of State to record the transfer; and
 - (f) all such financing must be disclosed at the time of license renewal.
- (7) Prior department approval is not required on loans to a licensed entity by an approved (licensed) owner of the entity (shareholder, member, partner) under the following conditions:
 - (a) the loan is used to meet an obligation of the licensed entity that cannot be met with its existing operating accounts and reserves;

- (b) the funds loaned to the licensed entity must be those of the owner. The funds cannot have been borrowed by the owner from any other source;
 - (c) the loan must be memorialized by an agreement between the licensed entity and owner. The loan agreement must meet the department's evaluation standards;
 - (d) the borrower and lender's financial records must accurately reflect the transaction;
 - (e) any balance due upon renewal not previously reported on license renewal forms must be reported on the license renewal application; and
 - (f) failure to maintain adequate records of the transaction or source of funds loaned will be considered a violation of this rule.
- (8) Prior department approval is not required for "cash equivalent sales" payables incurred for the purpose of acquiring video gambling machines under the following conditions:
- (a) the seller of the machines is a licensed video gambling machine manufacturer or distributor;
 - (b) the payable does not require the transfer of a security interest in any assets of the licensed gambling operation other than the video gambling machines purchased;
 - (c) repayment is due the licensed seller of the machines; and
 - (d) the term of repayment does not exceed 365 days.
- (9) The provisions of (8) do not apply to video gambling machine retail installment sale agreements or conversions from a "cash equivalent" sale to a retail installment sale agreement.
- (10) The department may disapprove the loan or transfer of the security interest if it determines that the loan or transfer or the agreement(s) involves an unsuitable source of financing or otherwise violates any statute or rule.

Authorizing statute(s): 23-5-115, MCA

Implementing statute(s): 23-5-115, 23-5-118, 23-5-176, MCA

History: NEW, 1991 MAR p. 1942, Eff. 10/18/91; AMD, 1993 MAR p. 2786, Eff. 11/25/93; AMD, 1994 MAR p. 2834, Eff. 10/28/94; AMD, 1997 MAR p. 404, Eff. 2/25/97; AMD, 1998 MAR p. 1176, Eff. 5/1/98; AMD, 2002 MAR p. 2441, Eff. 9/13/02; AMD, 2003 MAR p. 1282, Eff. 6/27/03; AMD, 2009 MAR p. 2480, Eff. 12/25/09; AMD, 2011 MAR p. 146, Eff. 2/11/11.