

1 (3) Effective July 1, 2016, this chapter does not apply to the operations of the state compensation
2 insurance fund provided for in Title 39, chapter 71, part 23. Administrative rules adopted by the state fund board
3 of directors prior to July 1, 2016, apply to new and renewal policies issued by the state fund that are effective
4 prior to July 1, 2016. The state fund is subject to rules adopted by any agency that by law apply to the state
5 fund."

6

7 **Section 2.** Section 2-4-102, MCA, is amended to read:

8 **"2-4-102. Definitions.** For purposes of this chapter, the following definitions apply:

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

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

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

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

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

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

20 (v) the public service commission when conducting arbitration proceedings pursuant to 47 U.S.C.
21 252 and 69-3-837.

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

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

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

28 (5) (a) "Interested person" means a person who has expressed to the agency an interest

1 concerning agency actions under this chapter and has requested to be placed on the agency's list of interested
2 persons as to matters of which the person desires to be given notice.

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

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

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

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

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

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

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

18 (b) The term does not include:

19 (i) statements concerning only the internal management of an agency or state government and
20 not affecting private rights or procedures available to the public, including rules implementing the state
21 personnel classification plan, the state wage and salary plan, or the statewide accounting, budgeting, and
22 human resource system;

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

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

26 (iv) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when
27 there is a statutory requirement for the publication of the rules and rules adopted annually or biennially relating
28 to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of

1 the rules is indicated to the public by means of signs or signals;

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

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

7 (vii) policies relating to sports wagering sales agents' commissions prescribed by the state lottery
8 and sports wagering commission; or

9 (viii) annual plan documents governed by and published as provided in Title 2, chapter 12, part 1.

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

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

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

16 (14) "Substantive rules" are either:

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

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

22 (15) "Supplemental notice" means a notice that amends the proposed rules or changes the timeline
23 for public participation."
24

25 **Section 3.** Section 2-4-303, MCA, is amended to read:

26 **"2-4-303. Emergency or temporary rules.** (1) (a) If an agency finds that an imminent peril to the
27 public health, safety, or welfare requires adoption of a rule upon fewer than 30 days' notice and states in writing
28 its reasons for that finding, it may proceed upon special notice filed with the committee, without prior notice or

1 hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The
 2 rule may be effective for a period not longer than 120 days, after which a new emergency rule with the same or
 3 substantially the same text may not be adopted, but the adoption of an identical rule under 2-4-302 is not
 4 precluded. Because the exercise of emergency rulemaking power precludes the people's constitutional right to
 5 prior notice and participation in the operations of their government, it constitutes the exercise of extraordinary
 6 power requiring extraordinary safeguards against abuse. An emergency rule may be adopted only in
 7 circumstances that truly and clearly constitute an existing imminent peril to the public health, safety, or welfare
 8 that cannot be averted or remedied by any other administrative act. The sufficiency of the reasons for a finding
 9 of imminent peril to the public health, safety, or welfare is subject to ~~judicial review upon petition by any~~
 10 ~~person~~legislative intent consistent with 2-4-303. The matter must be set for hearing at the earliest possible time
 11 and takes precedence over all other matters except older matters of the same character. The sufficiency of the
 12 reasons justifying a finding of imminent peril and the necessity for emergency rulemaking must be compelling,
 13 without deference to state or federal agencies, and, as written in the rule adoption notice, must stand on their
 14 own merits for purposes of judicial review. The dissemination of emergency rules required by 2-4-306 must be
 15 strictly observed and liberally accomplished.

- 16 (b) An emergency rule may not be used to implement an administrative budget reduction.
- 17 (c) (i) For the purposes of this subsection (1), "special notice" means written notice to each
 18 member of the committee and each member of the committee staff using expedient means, such as electronic
 19 mail. The special notice must include:
 - 20 (A) the agency's reasons for its findings of imminent peril to the public health, safety, or welfare;
 - 21 (B) the text of the proposed emergency rule or an overview of the rule's substantive changes; and
 - 22 (C) the estimated date of adoption.
- 23 (ii) Prior to adoption of an emergency rule, the agency shall make a good faith effort to provide
 24 special notice to each committee member and each member of the committee staff. The adoption notice of the
 25 emergency rule must state the date on which and the manner in which written contact was made or attempted
 26 with each person required under this subsection (1). If the adoption notice fails to state the date on which and
 27 the manner in which written contact was made or attempted for each person required under this subsection (1),
 28 the adoption of the emergency rule is ineffective for the purposes of this part.

1 (2) A statute enacted or amended to be effective prior to October 1 of the year of enactment or
2 amendment may be implemented by a temporary administrative rule, adopted before October 1 of that year,
3 upon any abbreviated notice or hearing that the agency finds practicable, but the rule may not be filed with the
4 secretary of state until at least 30 days have passed since publication of the notice of proposal to adopt the
5 rule. The temporary rule is effective until October 1 of the year of adoption. The adoption of an identical rule
6 under 2-4-302 is not precluded during the period that the temporary rule is effective."

7

8 **Section 4.** Section 2-4-412, MCA, is amended to read:

9 **"2-4-412. Legislative review of rules -- effect of failure to object.** (1) (a) The legislature may, by
10 bill, repeal any rule in the ARM. If a rule is repealed, the legislature shall in the bill state its objections to the
11 repealed rule. If an agency adopts a new rule to replace the repealed rule, the agency shall adopt the new rule
12 in accordance with the objections stated by the legislature in the bill. If the legislature does not repeal a rule
13 filed with it before the adjournment of that regular session, the rule ~~remains valid~~ invalid.

14 (b) The legislature may, by joint resolution, repeal a rule or amendment to a rule in the ARM that
15 was adopted after final adjournment of the most recent regular legislative session. If an agency adopts a new
16 rule to replace the repealed rule, the agency shall adopt the new rule in accordance with the objections stated
17 by the legislature in the joint resolution. In order to be effective, the joint resolution must be passed during the
18 regular session and not during a special session. After the regular session adjourns, the rule or the amendment
19 to the rule that was adopted during the period between the two regular legislative sessions ~~remains valid~~
20 invalid and may not be ~~repealed~~ reinstated using a joint resolution.

21 (2) The legislature may also by joint resolution request or advise or by bill direct the adoption,
22 amendment, or repeal of any rule. If a change in a rule or the adoption of an additional rule is advised,
23 requested, or directed to be made, the legislature shall in the joint resolution or bill state the nature of the
24 change or the additional rule to be made and its reasons for the change or addition. The agency shall, in the
25 manner provided in the Montana Administrative Procedure Act, adopt a new rule in accordance with the
26 legislative intent and direction in a bill.

27 (3) Rules and changes in rules made by agencies under subsection (2) must conform and be
28 pursuant to statutory authority.

1 (4) ~~Failure of the~~The legislature or the appropriate administrative rule review committee ~~to object in~~
2 ~~any manner to the adoption, amendment, or repeal of~~shall approve a rule ~~is in order to be inadmissible~~
3 ~~admissible~~ in the courts of this state to ~~prove challenge~~ the validity of any rule."

4

5 **Section 5.** Section 2-4-506, MCA, is amended to read:

6 **"2-4-506. Declaratory judgments on validity or application of rules.** (1) A rule may be declared
7 invalid or inapplicable in an action for declaratory judgment if it is found that the rule or its threatened
8 application interferes with or impairs or threatens to interfere with or impair the legal rights or privileges of the
9 plaintiff and subsection (2) of this section.

10 (2) A rule may also be declared invalid in the action on the grounds that the rule was adopted with
11 an arbitrary or capricious disregard for the purpose of the authorizing statute as evidenced by documented
12 legislative intent.

13 (3) A declaratory judgment may be rendered whether or not the plaintiff has requested the agency
14 to pass upon the validity or applicability of the rule in question.

15 (4) The action ~~may~~must be brought in the district court for the county in which the plaintiff resides
16 or has a principal place of business ~~or in which the agency maintains its principal office.~~ The agency must be
17 made a party to the action."

18

19 **Section 6.** Section 2-4-603, MCA, is amended to read:

20 **"2-4-603. Informal disposition and hearings -- waiver of administrative proceedings --**
21 **recording and use of settlement proceeds.** (1) (a) Unless precluded by law, informal disposition may be
22 made of any contested case by stipulation, agreed settlement, ~~consent order,~~ or default. A stipulation, agreed
23 settlement, ~~consent order,~~ or default that disposes of a contested case must be in writing and subject to public
24 inspection as provided in 2-4-623(6).

25 (b) Unless otherwise provided by law, if a stipulation, agreed settlement, ~~consent order,~~ or default
26 results in a monetary settlement involving an agency or the state, settlement proceeds must be deposited in the
27 account or fund in which the penalty, fine, or other payment would be deposited if the contested case had
28 proceeded to final decision. If there is no account or fund designated for the fine, penalty, or payment in the

1 type of action, then the settlement must be deposited in the general fund. Any stipulations or agreed
2 settlements are public record under 2-4-623(6) and must be prominently documented on the State of Montana
3 website in a searchable format.

4 (c) If a stipulation, agreed settlement, ~~consent order~~, or default results in a nonmonetary
5 settlement involving an agency or the state, settlement proceeds, whether received by the state or a third party,
6 must be recorded in a nonstate, nonfederal state special revenue account established pursuant to 17-2-
7 102(1)(b)(i) for the purpose of recording nonmonetary settlements. Any stipulations or agreed settlements are
8 public record under 2-4-623(6) and shall be prominently documented on the State of Montana website in a
9 searchable format.

10 (2) Except as otherwise provided, parties to a contested case may jointly waive in writing a formal
11 proceeding under this part. The parties may then use informal proceedings under 2-4-604. Parties to contested
12 case proceedings held under Title 37 or under any other provision relating to licensure to pursue a profession
13 or occupation may not waive formal proceedings. All proceedings of a contested case are public record under
14 2-4-623(6) documented on the State of Montana website in a searchable format.

15 (3) If a contested case does not involve a disputed issue of material fact, parties may jointly
16 stipulate in writing to waive contested case proceedings and may directly petition the district court for judicial
17 review pursuant to 2-4-702. The petition must contain an agreed statement of facts and a statement of the legal
18 issues or contentions of the parties upon which the court, together with the additions it may consider necessary
19 to fully present the issues, may make its decision. All proceedings of a contested case are public record under
20 2-4-623(6) documented on the State of Montana website in a searchable format."

21
22 **Section 7.** Section 2-4-612, MCA, is amended to read:

23 **"2-4-612. Hearing -- rules of evidence, cross-examination, judicial notice.** (1) Opportunity shall be
24 afforded all parties to respond and present evidence and argument on all issues involved.

25 (2) Except as otherwise provided by statute relating directly to an agency, agencies shall be bound
26 by common law and statutory rules of evidence. Objections to evidentiary offers may be made and shall be
27 noted in the record. When a hearing will be expedited and the interests of the parties will not be prejudiced
28 substantially, any part of the evidence may be received in written form.

1 (3) Documentary evidence may be received in the form of copies or excerpts if the original is not
2 readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

3 (4) All testimony shall be given under oath or affirmation.

4 (5) A party shall have the right to conduct cross-examinations required for a full and true disclosure
5 of facts, including the right to cross-examine the author of any document prepared by or on behalf of or for the
6 use of the agency and offered in evidence.

7 (6) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally
8 recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified
9 either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed,
10 including any staff memoranda or data. They shall be afforded an opportunity to contest the material so noticed.

11 (7) The agency's experience, technical competence, and specialized knowledge may be utilized in
12 the evaluation of evidence.

13 (8) Nothing in this section provides an agency more deference in the interpretation of applicable
14 state or federal statutory or administrative law."

15

16 **Section 8.** Section 2-4-704, MCA, is amended to read:

17 **"2-4-704. Standards of review.** (1) The review must be conducted by the court without a jury and
18 must be confined to the record. In cases of alleged irregularities in procedure before the agency not shown in
19 the record, proof of the irregularities may be taken in the court. The court, upon request, shall hear oral
20 argument and receive written briefs.

21 (2) The court may not substitute its judgment for that of the agency as to the weight of the
22 evidence on questions of fact. The court shall decide all questions of law, including any interpretation of a
23 federal or state constitutional provision, statute, or agency rule, without deference to any previous interpretation
24 by the agency. The court may affirm the decision of the agency or remand the case for further proceedings. The
25 court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because:

26 (a) the administrative findings, inferences, conclusions, or decisions are:

27 (i) in violation of constitutional or statutory provisions;

28 (ii) in excess of the statutory authority of the agency;

- 1 (iii) made upon unlawful procedure;
- 2 (iv) affected by other error of law;
- 3 (v) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole
- 4 record;
- 5 (vi) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise
- 6 of discretion; or
- 7 (b) findings of fact, upon issues essential to the decision, were not made although requested.
- 8 (3) If a petition for review is filed challenging a licensing or permitting decision made pursuant to
- 9 Title 75 or Title 82 on the grounds of unconstitutionality, as provided in subsection (2)(a)(i), the petitioner shall
- 10 first establish the unconstitutionality of the underlying statute."

- END -

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