



**Law and Justice Interim Committee**  
**62nd Montana Legislature**

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**TO:** Members, Law and Justice Interim Committee

**FROM:** David S. Niss, Staff Attorney

**RE:** Agency Rulemaking Actions

**DATE:** November 28, 2011

Since the last meeting of the Law and Justice Interim Committee (LJIC) on September 8, 2011, I've contacted one agency concerning its rule submission to the Secretary of State. That contact was for the purposes of MAR Notices No. 23-6-221 and 23-6-224, which are summarized below along with my comments and the response by the Department of Justice (DOJ).

I

MAR NOTICE No. 23-6-221 and 23-6-224 (MAR Issue No. 17, August 8, 2011): In the matter of the amendment of ARM 23.6.105, 23.6.108, and 23.6.109 pertaining to removal of a member of the Tow Truck Complaint Resolution Committee, removing references to the Public Service Commission and satellite operations, clarifying requirements regarding insurance, requirements for safety certification of tow trucks, and extending the time period for safety certification of tow trucks and In the matter of the amendment to ARM 23.6.106 pertaining to the Tow Truck Complaint Resolution Committee. A public hearing was held on October 13, 2011, with regard to Notice No. 23-6-224 only.

**RULEMAKING ISSUE:** Committee staff contacted the DOJ statutory rule reviewer concerning the statements of rationale for six of the proposed rules, which appeared to be statements of what the rule does. According to statute (section 2-4-305(6)(b), MCA), a statement of what a proposed rule does is not a sufficient rationale. The statutory rule reviewer responded that since the rationale cites the Legislative Audit Report that instigated the proposal of the rules, he believed the statements of rationale were sufficient but admitted deficiencies in two of the six statements of rationale.

**COMMITTEE STAFF RECOMMENDATION:** Committee Staff recommends no action by the LJIC concerning either of these two rulemaking notices. The amendments to ARM 23.6.105, 23.6.108, and 23.6.109 have been adopted.

## II

MAR NOTICE No. 23-16-223 (MAR Issue No. 20, October 27, 2011): Notice of public hearing In the matter of the adoption of NEW RULE I concerning change in business entity type, and amendment of ARM 23.16.117, 23.16.125, 23.16.126, 23.16.1101, 23.16.1713, 23.16.1901, and 23.16.1908, concerning transfer of interest to a new owner; change of liquor license type; change of location for a licensed manufacturer, distributor, or route operator; card game tournaments; licensure of sports tab sponsors; video gambling machine bill acceptors; and software specifications for video keno machines.

RULEMAKING ISSUE: Committee staff found no rulemaking issues with the proposed new rule and amendments.

## III

MAR NOTICE No. 23-3-220 (MAR Issue No. 18, September 22, 2011): In the Matter of the Adoption of New Rules I-IX establishing the 24/7 sobriety program.

RULEMAKING ISSUE: In this notice of adoption, the DOJ has adopted the rules first noticed in the July 14, 2011, issue of the MAR. In its notice, the DOJ has modified the language in the rules that Committee Staff determined would likely entail a separation of powers issue between the executive and judicial branches of state government. The modification means that the rules do not purport to control a judge's sentencing authority.

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