

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of 2013 Iowa Acts, Senate File 427, section 35, and Iowa Code section 105.4, the Department of Public Health and the Plumbing and Mechanical Systems Board hereby give Notice of Intended Action to amend Chapter 32, “Plumbing and Mechanical Systems Board—Licensee Discipline,” Iowa Administrative Code.

Item 4 is necessary to implement 2013 Iowa Acts, Senate File 427, which became effective upon enactment on April 26, 2013, by operation of section 36 of the Senate File.

The following items have the following additional purposes:

Items 1, 2, and 3 clarify the following additional grounds for licensee discipline: failure to comply with a compliance review of continuing education; practice outside the scope of a license; practicing as a journey person without the supervision of a master; practicing in a trade for which the licensee does not hold a Board-issued license; contracting for Iowa Code chapter 105-covered work in Iowa without a contractor license; practicing with a lapsed license; and practicing as a contractor without the required bonding and insurance.

Item 5 clarifies that an order imposing civil penalty may be administratively issued subsequent to the Board’s issuing a notice of intent to impose such penalty, and that a licensee can waive right to hearing at any time and pay a penalty noticed under rule 641—32.5(105).

Item 6 clarifies that the settlement agreement provisions for contested cases apply if a notice of hearing is issued under paragraph 32.5(5)“c.”

Item 7 establishes procedures which would allow the Board to participate in the state offset program to attempt to collect delinquent civil penalties.

Any interested person may make written suggestions or comments on these amendments on or before August 27, 2013. Written materials should be directed to Cynthia Houlson, Plumbing and Mechanical Systems Board, 321 E. 12th Street, Des Moines, Iowa 50319-0075; fax (515)281-6114; e-mail cynthia.houlson@idph.iowa.gov.

There will be a public hearing on August 27, 2013, from 11:30 a.m. to 1 p.m., at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. This hearing will originate from the Iowa Communications Network (ICN) and will be accessible over the ICN from the following locations:

Public Library
529 Pierce Street
Sioux City

Crestwood High School
1000 4th Avenue East
Cresco

Public Library, Meeting Room C
415 Commercial Street
Waterloo

Ottumwa Regional Health Center
1001 E. Pennsylvania
Ottumwa

Spirit Lake High School
2701 Hill Avenue
Spirit Lake

Public Library Information Center
Kelinson Room
2950 Learning Campus Drive
Bettendorf

Lucas State Office Building, Sixth Floor
321 E. 12th Street
Des Moines

Iowa Western Community College – 2
923 E. Washington
Clarinda

Burlington High School
421 Terrace Drive
Burlington

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Plumbing and Mechanical Systems Board at the above address and advise staff of specific needs.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 8A.504, 105.22, 105.23, 105.27 and 105.28 and 2013 Iowa Acts, Senate File 427.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definition of “Lapsed license” in rule **641—32.1(105,272C)**:

“*Lapsed license*” means a license that expired prior to June 30, 2017, and was not renewed within 60 days following its expiration date, or a license that expired on or after June 30, 2017, and was not renewed by the following August 31.

ITEM 2. Amend subrule 32.2(12) as follows:

32.2(12) Failure to ~~cooperate with a board audit~~ timely submit the requested materials in response to a compliance review conducted pursuant to 641—30.5(105).

ITEM 3. Adopt the following **new** subrules 32.2(35), 32.2(36) and 32.2(37):

32.2(35) Practice outside the scope of the license, which shall include, but not be limited to:

- a. Practicing as a journeyperson without the supervision of a master.
- b. Practicing in a trade for which the licensee does not hold a board-issued license.
- c. Contracting for plumbing or mechanical work in the state of Iowa without a board-issued contractor license.

32.2(36) Practicing on a lapsed license.

32.2(37) Practicing as a contractor without valid bonding or insurance, as required by Iowa Code section 105.19 as amended by 2013 Iowa Acts, Senate File 427.

ITEM 4. Amend subrule 32.5(1) as follows:

32.5(1) Unlawful practices. Practices by an unlicensed person which are subject to civil penalties include, but are not limited to:

a. Acts or practices by unlicensed persons which require licensure to install or repair plumbing, mechanical, HVAC, refrigeration, sheet metal, or hydronic systems under Iowa Code chapter 105.

b. Acts or practices by unlicensed persons which require certification to install or repair medical gas piping systems under Iowa Code chapter 105.

c. Engaging in the business of designing, installing, or repairing plumbing, mechanical, HVAC, refrigeration, sheet metal, or hydronic systems without employing a licensed master.

d. Providing plumbing, mechanical, HVAC, refrigeration, sheet metal, or hydronic systems services on a contractual basis.

~~*d. e.*~~ Use or attempted use of a licensee's certificate or wallet card or use or attempted use of an expired, suspended, revoked, or nonexistent certificate.

~~*e. f.*~~ Falsely impersonating a person licensed under Iowa Code chapter 105 as amended by 2013 Iowa Acts, Senate File 427.

~~*f. g.*~~ Providing false or forged evidence of any kind to the board in obtaining or attempting to obtain a license.

~~*g. h.*~~ Other violations of Iowa Code chapter 105.

~~*h. i.*~~ Knowingly aiding or abetting an unlicensed person or establishment in any activity identified in this rule.

ITEM 5. Amend paragraph **32.5(5)“b”** as follows:

b. If a request for hearing is not timely made, or if the nonlicensee waives in writing the right to hearing and agrees to pay the penalty, the board chairperson, ~~or the chairperson's designee,~~ or the board executive may issue an order imposing the civil penalty and requiring compliance with Iowa Code chapter 105, as described in the notice. The order may be mailed by regular first-class mail or served in the same manner as the notice of intent to impose a civil penalty.

ITEM 6. Rescind paragraph **32.5(5)“d”** and adopt the following **new** paragraph in lieu thereof:

d. Subsequent to the issuance of a notice of hearing under this subrule, the settlement agreement provisions of 641—33.23(272C) shall apply.

ITEM 7. Adopt the following **new** rule 641—32.6(105,272C):

641—32.6(105,272C) Collection of delinquent civil penalties and discipline-related debts.

32.6(1) The board may participate in the department of administrative service's income offset program.

32.6(2) Definitions. For purposes of this rule, the following definitions apply:

“Debtor” means any person who owes a debt to the board as a result of a proceeding in which notice and opportunity to be heard was afforded.

“Income offset program” means the program established in Iowa Code section 8A.504 through which the department of administrative services coordinates with state agencies to satisfy liabilities owed to those state agencies.

“Notification of offset” means receipt of actual notice by the board from the department of administrative services that the debtor is entitled to a payment that qualifies for offset.

“Preoffset notice” means the notice required by 32.6(5) *“a.”*

32.6(3) The board office may provide the department of administrative services a liability file.

a. With respect to each individual debtor, the liability file shall contain the following:

(1) Information relevant to the identification of the debtor, as required by the department of administrative services and including the debtor's name and social security number or federal identification number,

(2) The amount of liability, and

- (3) A written statement declaring the debt to have occurred.
- b. The board office shall certify the liability file at least semiannually, as required by the department of administrative services.
- c. The board office shall update the liability file:
 - (1) When necessary to reflect new debtors, and
 - (2) When the status of a debt changes due to payment of the debt, invalidation of the liability, alternate payment arrangements with the debtor, bankruptcy, or other factors.

32.6(4) Due diligence.

a. Before submitting debtor information to the outstanding liability file, the board office shall make a good faith attempt to collect from the debtor. Such attempt shall include at least all of the following:

- (1) A telephone call requesting payment.
- (2) An initial letter to the debtor's last discernible address requesting payment within 15 days.
- (3) A second letter to the debtor's last discernible address requesting payment within 10 days.

b. The board office shall document due diligence and retain such documentation.

32.6(5) Notification of offset. Within 10 calendar days of receiving notification from the department of administrative services that the debtor is entitled to a payment, the board office shall:

a. Send a preoffset notice to the debtor. The preoffset notice shall inform the debtor of the amount the department intends to claim, and shall include all of the following information:

- (1) The board's right to the payment in question.
- (2) The board's right to recover the payment through the offset procedure.
- (3) The basis of the board's case in regard to the debt.
- (4) The right of the debtor to request, in accordance with subrule 32.6(6) and within 15 days of the mailing of the preoffset notice, a split of the payment between parties when the payment in question is jointly owned or otherwise owned by two or more persons.

(5) The debtor's right to appeal the offset, in accordance with subrule 32.6(7) and within 15 days of the mailing of the preoffset notice, and the procedure to follow in that appeal.

(6) The board office's contact information, including a telephone number, for the debtor to contact in case of questions.

b. Notify the department of administrative services that the preoffset notice has been sent to the debtor, and supply a copy of the preoffset notice to the department of administrative services.

32.6(6) Request to divide a jointly or commonly owned right to payment.

a. A debtor who receives a preoffset notice may request release of a joint or common owner's share, if the request is received by the board within 15 days of the date the preoffset notice is mailed.

b. In conjunction with such a request, the debtor shall provide to the board the full name and social security number of any joint or common owner.

c. Upon receipt of such a request, the board office shall notify the department of administrative services of the request.

32.6(7) Appeal process.

a. A debtor who receives a preoffset notice may request an appeal of the underlying debt, if such request is made within 15 days of the date the preoffset notice is mailed.

b. Request for appeal must be submitted in writing to the Iowa Plumbing and Mechanical Systems Board, Attn: Offset Appeals, 321 E. 12th Street, Des Moines, Iowa 50319-0075.

c. If a request for appeal is timely made, the board office shall issue a notice of hearing to the debtor, and also serve a copy upon the assistant attorney general for the board.

d. The appeal shall be conducted as a contested case proceeding pursuant to 641—Chapter 33.

e. If a request for appeal is timely made, the board office shall notify the department of administrative services within 45 days of the notification of offset. The board shall hold a payment in abeyance until the final disposition of the contested liability or offset.

32.6(8) Once any offset has been completed, the board office shall notify the debtor of the action taken, and what balance, if any, still remains owing to the board.