

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Rule making related to licensing

The Plumbing and Mechanical Systems Board hereby amends Chapter 32, “Plumbing and Mechanical Systems Board—Licensee Discipline,” and Chapter 60, “Plumbing and Mechanical Systems Board—Noncompliance Regarding Child Support, Nonpayment of State Debt, and Noncompliance Regarding Student Loan Repayment,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 105.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 105 and 272C; 2019 Iowa Acts, Senate File 304; and 2019 Iowa Acts, Senate File 567.

Purpose and Summary

The amendments to Chapter 32 reflect changes made by 2019 Iowa Acts, Senate File 567, which specified when the Board can deny a license. Minor edits and changes are also included.

The amendments to Chapter 60 reflect changes made by 2019 Iowa Acts, Senate File 304, which repealed the sections of the Iowa Code that provided authority for 641—Chapter 195. Chapter 60 currently references 641—Chapter 195, which has been rescinded. The amendments prohibit the suspension or revocation of a license issued by the Board to a person who is in default or is delinquent on student loan repayment or a service obligation.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 26, 2020, as **ARC 4943C**.

The Board received one comment regarding an objection to changing the wording in subrule 32.2(22) from “professional negligence” to “related profession.” Item 2 of the Notice of Intended Action proposed an amendment to subrule 32.2(22). The amendment would authorize the Board to impose discipline or sanctions for failure to notify the Board within 30 days of any judgment entered on or settlement of a claim or action related to the profession.

The commenter asserted Item 2 of **ARC 4943C** expanded the types of claims that must be reported to the Board when there is a settlement of or judgment in legal proceedings. The commenter also asserted the proposed change set forth in Item 2 is problematic because it does not specify the precise legal causes of action that are “related to the profession” within the meaning of the amendment. The commenter asked whether a breach of contract claim, services work, or a warranty claim would qualify. The commenter requested that Item 2 of **ARC 4943C** be withdrawn or that the Board delineate the specific type of claim that should be reported to the Board under the amendment.

Board response:

The Board agrees that Item 2 of **ARC 4943C** expands the types of judgments or settlements that must be reported to the Board. Indeed, that is the fundamental purpose of Item 2. One of the Board’s purposes is to protect the public, and it must be able to protect the public not just from negligent plumbers and mechanical professionals, but also from deceptive or dishonest ones. A plumber or mechanical professional can harm the public without performing negligently.

The Board declines to establish a specific list of causes of action that must be reported. Agencies must operate with flexibility in their respective areas of expertise. Additionally, the Board may impose

discipline for actions or omissions that do not necessarily conform neatly to any single recognized cause of action—for example, the broad phrase “unethical conduct” set forth in Iowa Code section 105.22(3). Ultimately, reporting any judgment or settlement is generally not burdensome.

The Board also declines to answer the commenter’s questions about three specific causes of action as part of the rule-making process. The declaratory order process under Iowa Code section 17A.9 and 641—Chapter 57 remains available to any person seeking the agency’s conclusion as to the applicability to specified circumstances of a rule within the agency’s primary jurisdiction.

No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Board on April 21, 2020.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to the Board’s general waiver provisions contained in 641—Chapter 31.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on June 24, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 32.2(5) as follows:

32.2(5) Conviction of a felony ~~related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee’s ability to practice within the profession listed in Iowa Code section 105.22(4).~~ A copy of the record or conviction or plea of guilty shall be conclusive evidence of such conviction.

ITEM 2. Amend subrule 32.2(22) as follows:

32.2(22) Failure to notify the board within 30 days after the occurrence of any judgment entered on or settlement of professional negligence a claim or action related to the profession.

ITEM 3. Amend subrule 32.2(37) as follows:

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 paragraph **32.5(1)“f”** as follows:

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

ITEM 5. Amend rule 641—60.3(261) as follows:

641—60.3(261 272C) Student loan repayment noncompliance. ~~The board hereby adopts by reference 641—Chapter 195, “Student Loan Default/Noncompliance with Agreement for Payment of Obligation,” Iowa Administrative Code.~~ The board shall not suspend or revoke the license or certification of a person who is in default or is delinquent on repayment or a service obligation under federal or state postsecondary educational loans or public or private services-conditional postsecondary tuition assistance solely on the basis of such default or delinquency.

ITEM 6. Amend **641—Chapter 60**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 252J, 272C, and 272D ~~and section 261.126.~~

[Filed 4/22/20, effective 6/24/20]

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/6/20.