

REVENUE DEPARTMENT[701]

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 Iowa Code chapter 17A and section 421.14, the Department of Revenue hereby gives Notice of Intended Action to adopt new Chapter 153, "License Sanctions for Collection of Debts Owed the State of Iowa or a State Agency," Iowa Administrative Code.

This amendment is proposed as a result of 2008 Iowa Acts, Senate File 2428, sections 7 through 15.

The amendment adopts new Chapter 153 to describe the Department of Revenue's Centralized Collection Unit's role in processing professional license sanctions for collection of debt owed to the state of Iowa or to a state agency.

The proposed amendment may necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of this amendment would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that this proposed amendment may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than December 8, 2008, to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on this proposed amendment on or before November 25, 2008. Such written comments should be directed to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by November 26, 2008.

This amendment is intended to implement 2008 Iowa Acts, Senate File 2428, sections 7 to 15.

The following amendment is proposed.

Adopt the following **new** 701—Chapter 153:

CHAPTER 153
LICENSE SANCTIONS FOR COLLECTION OF DEBTS OWED
THE STATE OF IOWA OR A STATE AGENCY

701—153.1(272D) Definitions. For purposes of this chapter, the following definitions shall govern:

"Certificate of noncompliance" means a document provided by the unit certifying that the named person has outstanding liability placed with the unit and has not entered into an approved payment plan to pay the liability.

“Liability” means a debt or obligation placed with the unit for collection that is greater than \$1,000. For purposes of this chapter, “liability” does not include child support payments collected pursuant to Iowa Code chapter 252J.

“License” means a license, certification, registration, permit, approval, renewal, or other similar authorization issued to a person by a licensing authority which evidences the admission to, or granting of authority to engage in, a profession, occupation, business, industry, or recreation. “License” includes licenses for hunting and fishing or for other recreational activity.

“Licensee” means a person to whom a license has been issued, or who is seeking the issuance of a license.

“Licensing authority” means the supreme court, or an instrumentality, agency, board, commission, department, officer, organization, or any other entity of the state, which has authority within this state to suspend or revoke a license or to deny the renewal or issuance of a license authorizing a person to engage in a business, occupation, profession, recreation, or industry.

“Obligor” means a person with a liability placed with the unit.

“Person” means a licensee.

“Unit” means the centralized collection unit of the department of revenue.

“Withdrawal of a certificate of noncompliance” means a document provided by the unit certifying that the certificate of noncompliance is withdrawn and that the licensing authority may proceed with issuance, reinstatement, or renewal of the person’s license.

701—153.2(272D) Purpose and use. The unit may use license sanctions as a process to help collect liabilities placed with the unit except for child support cases.

701—153.3(272D) Challenge to issuance of certificate of noncompliance. Actions initiated by the unit under this chapter shall not be subject to contested case proceedings or further review pursuant to Iowa Code chapter 17A, and any resulting court hearing shall be an original hearing before the district court.

701—153.4(272D) Use of information. Information obtained by the unit and the licensing authority under this chapter shall be used solely for the purposes of this chapter. Information may be exchanged between the unit and the licensing authority.

701—153.5(272D) Notice to person of potential sanction of license. Before issuing a certificate of noncompliance, the unit must send a notice to the person by regular mail to the person’s last-known address. The notice must include all of the following:

1. The address and telephone number of the unit and the person’s unit account number.
2. A statement that the person may request a conference with the unit to contest the action.
3. A statement that if the person fails to contact the unit to schedule a conference within 20 days of the notice’s mailing, the unit shall issue a certificate of noncompliance bearing the person’s name, social security number, and unit account number to any appropriate licensing authority, certifying that the obligor has an outstanding liability placed with the unit.
4. A statement that in order to stay the issuance of a certificate of noncompliance, the unit must receive a written request for conference within 20 days of the notice’s mailing to the person.
5. The names of the licensing authorities to which the unit intends to issue a certificate of noncompliance.
6. A statement that if the unit issues a certificate of noncompliance to an appropriate licensing authority, the licensing authority shall initiate proceedings to refuse to issue or renew, or to suspend or revoke the person’s license, unless the unit provides the licensing authority with a withdrawal of a certificate of noncompliance.

701—153.6(272D) Conference. The person may request a conference with the unit to challenge the unit’s issuance of a certificate of noncompliance following the mailing of the notice of potential license sanction or at any time after a licensing authority serves notice of suspension, revocation, denial of

issuance, or nonrenewal of a license. The request for a conference shall be made in writing to the unit. If the conference is requested pursuant to and after the unit's mailing of a notice of potential license sanction under rule 701—153.5(272D), the request must be received by the unit within 20 days following the mailing or service of that notice.

153.6(1) Notification. The unit shall notify the person of the date, time, and location of the conference by regular mail, with the date of the conference to be no earlier than 10 days following the unit's issuance of the notice of the conference. If the person fails to appear at the conference, the unit shall issue a certificate of noncompliance.

153.6(2) Location. The conference may be conducted by telephone or in person at the location of the unit.

701—153.7(272D) Issuance of certificate of noncompliance. If the person fails to appear at the conference, the unit shall issue a certificate of noncompliance. If the person does not timely request a conference or pay the amount of liability owed within 20 days of the notice's mailing, the unit shall issue a certificate of noncompliance. However, the unit will not issue a certificate of noncompliance if:

1. The unit finds a mistake in the identity of the person;
2. The unit finds a mistake in determining the amount of the liability;
3. The unit determines the amount of the liability is less than \$1,000;
4. The obligor pays the amount due or enters into an acceptable payment plan;
5. The obligor is in bankruptcy; or
6. The unit finds additional time is required for the person to comply.

701—153.8(272D) Stay of certificate of noncompliance. The unit shall grant the person a stay of the issuance of a certificate of noncompliance upon receiving a timely written request for a conference.

701—153.9(272D) Written agreements. The obligor and the unit may enter into a written agreement for payment of the liability owed.

153.9(1) Criteria for written agreement. The written agreement shall take into consideration and include all of the following:

- a. Obligor's ability to pay.
- b. A statement that the obligor will not incur additional liabilities of any amount during the term of the payment plan.
- c. The method, amount, and dates of payments by the obligor.
- d. A statement that upon breach of the written agreement by the obligor, the unit shall issue a certificate of noncompliance to any appropriate licensing authority.

153.9(2) Other remedies. A written agreement entered into pursuant to this rule does not preclude any other remedy provided by law.

701—153.10(272D) Decision of the unit.

153.10(1) If the unit mails a notice to a person and the person requests a conference, the unit shall issue a written decision if any of the following conditions exist:

- a. The person fails to appear at a scheduled conference.
- b. A conference is held and the unit makes a decision based upon that conference.
- c. The obligor fails to comply with a written agreement entered into by the obligor and the unit.

153.10(2) Mailing of decision. The unit shall send a copy of the written decision to the person by regular mail at the person's most recent address of record. If the decision is made to issue a certificate of noncompliance or to withdraw the certificate of noncompliance, a copy of the certificate of noncompliance or of the withdrawal of the certificate of noncompliance shall be attached to the written decision.

153.10(3) Contents of decision. The written decision shall state all of the following:

- a. That the certificate of noncompliance or withdrawal of the certificate of noncompliance has been mailed to the licensing authorities named in the notice provided by the unit.

b. That upon receipt of a certificate of noncompliance, the licensing authority shall initiate proceedings to suspend, revoke, deny issuance, or deny renewal of a license, unless the licensing authority receives a withdrawal of a certificate of noncompliance from the unit.

c. That in order to obtain a withdrawal of a certificate of noncompliance from the unit, the obligor shall enter into a written agreement with the unit, comply with an existing written agreement with the unit, or pay the total amount of liability owed.

d. That if the unit issues a written decision which includes a certificate of noncompliance, the person may request a hearing before the district court. The person may retain an attorney at the person's own expense to represent the person at the hearing. The district court's review shall be limited to mistakes of fact surrounding the amount of the liability owed or the identity of the person.

701—153.11(272D) Withdrawal of certificate of noncompliance. Once it has issued a certificate of noncompliance, the unit shall issue a withdrawal of the certificate of noncompliance only if any of the following applies:

1. The unit or the court finds a mistake in the identity of the person;
2. The unit or the court finds a mistake in the amount owed;
3. The obligor enters into a written agreement with the unit to pay the liability owed, the obligor complies with an existing written agreement, or the obligor pays the total amount of liability owed; or
4. The unit finds that a hardship exists, such as catastrophic illness or state or federally declared disasters.

701—153.12(272D) Certificate of noncompliance to licensing authority.

153.12(1) The unit shall issue a certificate of noncompliance to any appropriate licensing authority. The certificate of noncompliance shall contain the person's name and social security number and shall request that the licensing authority do the following:

- a. Initiate its procedures to revoke or suspend the person's license or to deny the issuance or renewal of a license; and
- b. Provide to the person notice of intent to suspend, revoke, deny issuance, or deny renewal of a license, including the effective date of the action.

153.12(2) The suspension, revocation, or denial shall be effective no sooner than 30 days following provision of notice to the person.

701—153.13(272D) Requirements of the licensing authority.

153.13(1) Records. A licensing authority shall collect and maintain records of its licensees. The records shall be made available to the unit so that the unit may match to the records the names of persons with any liabilities placed with the unit for collections. The records must be submitted in an electronic format and updated on a periodic basis and must include, at a minimum, the following:

- a. The licensee's first and last names.
- b. The licensee's current known address.
- c. The licensee's social security number.

153.13(2) Certificate of noncompliance. Upon receipt of a certificate of noncompliance, a licensing authority shall initiate its existing rules and procedures for the suspension, revocation, or denial of issuance or renewal of a license to a person.

153.13(3) Notice. The licensing authority shall provide to a person notice of intent to suspend, revoke, or deny issuance or renewal of a license under the provisions of 2008 Iowa Acts, Senate File 2428, sections 7 to 15. The notice shall be effective 30 days following the provision of notice to the person and shall state at a minimum all of the following:

- a. That the licensing authority has received a certificate of noncompliance from the unit and intends to suspend, revoke, or deny issuance or renewal of the person's license;
- b. That the person must contact the unit to schedule a conference or to otherwise obtain a withdrawal of a certificate of noncompliance;

c. That the licensing authority will revoke, suspend or deny the person's license unless a withdrawal of certificate of noncompliance is received from the unit within 30 days from the date of the notice;

d. That in the event the licensing authority's rules and procedures conflict with the additional rules and procedures under this chapter, the rules and procedures of this chapter shall apply;

e. That mistakes of fact in the amount of the liability owed and the person's identity may not be contested to the licensing authority; and

f. That the person may request a district court hearing as outlined in subrule 153.10(3) "d."

153.13(4) *Withdrawal.* Upon receipt of a withdrawal of a certificate of noncompliance from the unit, the licensing authority shall immediately reinstate, renew, or issue a license if the person is otherwise in compliance with the licensing authority's requirements.

701—153.14(272D) District court hearing. For purposes of this rule, "notice of intent" means a licensing agency's notice to a person of its intent to suspend, revoke, or deny renewal or issuance of a license under the provisions of 2008 Iowa Acts, Senate File 2428, sections 7 to 15.

153.14(1) *Actions that may be reviewed.* A person may file an application for review with the district court following:

a. The issuance of a written decision and certificate of noncompliance by the unit; or

b. The provision of a notice of intent by a licensing authority.

153.14(2) *Application.* A person may seek review of the actions listed in subrule 153.14(1) and request a hearing before the district court by filing an application with the district court in the county in which the majority of the liability was incurred. The person must send a copy of the application to the unit by regular mail. The application must be filed no later than 30 days after the unit issues a written decision and certificate of noncompliance or the licensing authority issues its notice of intent.

153.14(3) *Stay.* The filing of an application for review and hearing before the district court will automatically stay any action by the licensing authority as outlined in the licensing authority's notice of intent.

153.14(4) *Scheduling.* The clerk of the district court shall schedule a hearing and mail a copy of the scheduling order to the person, the unit, and the licensing authority.

153.14(5) *Certification prior to hearing.* Upon receipt from the clerk of court of a copy of a scheduling order and prior to the hearing, the unit shall certify to the court a copy of its written decision and certificate of noncompliance indicating the date of issuance, and the licensing authority shall certify to the court a copy of its notice of intent.

153.14(6) *Hearing.* The hearing on the person's application shall be scheduled and held within 30 days of the application's being filed. However, if the person fails to appear at the scheduled hearing, the stay shall be lifted and the licensing authority shall continue its procedures pursuant to its notice of intent.

153.14(7) *Scope of review.* The district court's review shall be limited to demonstration of the amount of the liability owed or the identity of the person.

153.14(8) *Findings.* If the court finds the unit was in error either in issuing a certificate of noncompliance or in its failure to issue a withdrawal of certificate of noncompliance, the unit shall issue a withdrawal of certificate of noncompliance to the appropriate licensing authority. If the court finds the unit was justified in issuing a certificate of noncompliance or in not issuing a withdrawal of certificate of noncompliance, a stay imposed under subrule 153.14(3) shall be lifted and the licensing authority shall proceed with action as outlined in its notice of intent.

These rules are intended to implement 2008 Iowa Acts, Senate File 2428, sections 7 to 15.