

641—153.4(142D) Complaints and enforcement.

153.4(1) Duties of department. The department will maintain a system for receiving and investigating complaints against persons who own, operate, manage, or otherwise have custody or control of a place where smoking is prohibited and who fail to comply with the provisions of Iowa Code chapter 142D.

a. The department may designate one or more public agencies through a 28E agreement or other written contract to assist with enforcement.

b. The department may refer complaints regarding a violation to the law enforcement authorities of the state or of the political subdivision of the state in which the alleged violation occurred.

153.4(2) Enforcement against a person who smokes in an area where smoking is prohibited. Pursuant to Iowa Code chapter 142D, the department designates the law enforcement authorities of the state and of each political subdivision of the state to assist with enforcement. A peace officer may issue a citation in lieu of arrest pursuant to Iowa Code chapter 805 against a person who smokes in an area where smoking is prohibited pursuant to Iowa Code chapter 142D, and such person shall pay a civil penalty pursuant to Iowa Code section 805.8C(3) for each violation.

153.4(3) Enforcement against a person who owns, operates, manages, or otherwise has control of a place where smoking is prohibited. Pursuant to Iowa Code chapter 142D, the department designates the law enforcement authorities of the state and of each political subdivision of the state to assist with enforcement. The department or its designee may initiate a civil action against an owner, operator, manager, or person who otherwise has custody or control of a place where smoking is prohibited pursuant to Iowa Code chapter 142D, and such person shall pay the applicable civil penalty pursuant to Iowa Code chapter 142D.

153.4(4) Manner of filing a complaint. Any person may register a complaint with the department by calling the toll-free number, 1.888.944.2247, or on the department's website, hhs.iowa.gov/smokefreeair.

153.4(5) Contents of the complaint. A complaint filed with the department shall include:

a. The name or location of the public place, place of employment, area declared a nonsmoking place pursuant to Iowa Code chapter 142D, or outdoor area where smoking is prohibited that is the subject of the complaint;

b. A description of the occurrence that prompted the complaint; and

c. Any other information relevant to the occurrence.

153.4(6) Review of complaint by department. Upon receipt of a complaint, the department or its designee may contact the individual making the complaint to confirm the details of the complaint and obtain any additional information.

153.4(7) Information from inspections. Information received by the department of one or more violations of Iowa Code chapter 142D as a result of an inspection of a public place by the state or political subdivision of the state shall be considered a credible complaint under this rule.

153.4(8) Notice of potential violation. If the department determines that a complaint against a public place, place of employment, area declared nonsmoking pursuant to Iowa Code chapter 142D, or outdoor areas where smoking is prohibited is credible:

a. For the first complaint, the department shall:

(1) Issue a written notice of potential violation to the owner, operator or person having custody or control including the details of the complaint.

(2) Include in the notice educational materials about how to comply with Iowa Code chapter 142D, and information on whom to contact for further information and assistance for compliance.

b. For the second and subsequent complaints within one year, the department:

(1) Shall issue a subsequent notice of potential violation to the owner, operator, or person having custody or control.

(2) May authorize one or more public agencies to conduct a compliance check of the location.

(3) May pursue any remedy authorized by Iowa Code chapter 142D, including the enforcement of civil penalties.

[ARC 8756C, IAB 1/8/25, effective 7/1/25]