



IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

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THE RULES DIGEST

June 2010

Scheduled for committee review
Tuesday, June 8th, 2010.
Senate Committee Room #116

Reference
XXXII IAB No. 23(05/05/10)
XXXII IAB No. 24(05/19/10)
XXXII IAB No. 25(06/02/10)

HIGHLIGHTS IN THIS ISSUE:

LONG-TERM CARE RESIDENT'S ADVOCATE/OMBUDSMAN, Aging Department1
LICENSEE DISCIPLINE, Educational Examiners2
INDEPENDENT CAMPAIGN EXPENDITURE, Ethics Board3
MIXED MARTIAL ARTS, Labor Division5
VOLUNTEER HEALTH CARE PROVIDER PROGRAM, Public Health Department5
BUILDING CODE: SPRINKLERS, Public Safety Department9

AGING DEPARTMENT

9:35

Long-term care resident's advocate/ombudsman, IAB Vol. XXXII, No. 24 ARC 8772B, NOTICE.

The department is updating an existing chapter detailing the duties of the long-term care resident's advocate/ombudsman. 2010 Iowa Acts, Senate File 2263. The Act in part requires compliance with the provisions of 42 U.S.C. §3058g; these federal requirements must be met in order to qualify for funding. The Act re-creates the long-term care resident's advocate/ombudsman as an office within the Department. Many of the ombudsman's duties, once set out in these rules, are now in Code §231.41; these include:

- Establishing a reporting system;
Providing information and education about long-term care issues;
Monitoring the federal, state, and local laws that relates to long-term care;
Filing an annual report with the Governor and the General Assembly.

The duties of the local long-term care resident's advocates are also detailed in the new legislation. The most significant duty is to make visits to long-term care facilities, assisted living programs, and elder group homes to observe daily routines, meals, and activities; to work at resolving complaints; and to make referrals to appropriate licensing, certifying, and enforcement agencies for investigation of abuse complaints and corrective actions.

THE RULES DIGEST

-2-

As part of this mandate Senate File 2263 provides that the long-term care advocate or a trained volunteer may enter any long-term care facility, assisted living program, or elder group home at any time with or without prior notice or complaint and must be granted access to residents and tenants *at all times*. Any facility or program which intentionally prevents or impedes the work of the state or local long-term care advocate is subject to a penalty of up to \$1,500 for each violation. The proposed rules establish an appeals process to contest any assessed penalty.

ADMINISTRATIVE SERVICES DEPARTMENT

9:50

Supervisory employees: bumping restrictions, IAB Vol. XXXII, No. 24 ARC 8764B, EMERGENCY.

During a “reduction in force” or layoff, the state employees to be laid off are determined by total “retention points”, which is the sum of the total of the length of service points and the total of the performance record points. Employees who are affected by a reduction in force may, in lieu of layoff, elect to exercise bumping rights, by taking a position held by a person with less seniority or fewer retention points who is not being laid off.

2010 Iowa Acts, Senate File 2088 revised this process; §67 of the Act provides that with the exception of Department of Public Safety employees, other supervisory employees may not bump or replace employees with less seniority or fewer retention points who are not being laid off.

EDUCATIONAL EXAMINERS BOARD

10:20

Licensee discipline: availability of complaint, IAB Vol. XXXII, No. 25, ARC 8823B, EMERGENCY.

In 2009 the Board adopted a provision making Board disciplinary procedure similar to those of the other licensing boards, by keeping the identity of the complainant confidential until probable cause is found. Opponents vigorously opposed this change, contending that the licensing discipline process for educators was significantly different from other licensed professions, since it involved action on both the state and local level, and that by concealing the identity of the complainant, resolution of the issue would be more difficult. The Committee imposed a session delay on the entire filing, in order to provide the legislature an opportunity to review this confidentiality provision before implementation.

2010 Iowa Acts, Senate File 2376, effectively nullified this rulemaking, by providing that complaints were to be immediately provided to the respondent.

THE RULES DIGEST
-3-
ETHICS AND CAMPAIGN DISCLOSURE BOARD

10:30

Independent campaign expenditure, IAB Vol. XXXII, No. 25, ARC 8826B, EMERGENCY.

Senate File 2354 creates new disclosure and other requirements in response to the United States Supreme Court decision *Citizens United v. Federal Election Commission*. The Act was effective on enactment. The decision allows corporations and unions to use their general funds for their own, independent political campaign activities, as long as those activities are not coordinated with a candidate's campaign. As part of the prohibition against coordination, the Act provides that an entity making an independent expenditure shall not engage or retain an advertising firm or consultant that has also been engaged or retained within the prior six months by the candidate, candidate's committee, or ballot issue political action committee.

The decision does not impact the activities of political action committees or overturn the prohibition on direct contributions to candidates from corporations. Corporations seeking to provide direct support for candidates are still limited to voluntary employee contributions through political action committees.

The Act requires unions and corporations which make independent expenditures to obtain authorization of a majority of the entity's organizational leadership body for an independent expenditure involving a candidate or ballot issue committee. The authorization must occur in the same calendar year in which the independent expenditure is incurred. A foreign national cannot make an independent expenditure.

An entity making an independent expenditure must file an independent expenditure statement within forty-eight hours of the making of an independent expenditure in excess of seven hundred fifty dollars in the aggregate and with the board; subsequent reports shall be filed if the entity making the independent expenditure either raises or expends more than one thousand dollars. The statement must contain a variety of information, including a certification by an officer of the corporation that the board of directors, executive council, or similar organizational leadership body expressly authorized the independent expenditure.

Published campaign material, which includes television, video, or motion picture advertising, must contain an attribution statement. If the entity responsible is a corporation, the words "paid for by", the name and address of the corporation, and the name and title of the corporation's chief executive officer must appear on the material. If the published material is the result of an independent expenditure the published

THE RULES DIGEST

-4-

material must include a statement that the published material was not authorized by any candidate, candidate's committee, or ballot issue committee. The person who is responsible for the published material has the sole responsibility and liability for the attribution statement. The rules clarify that an inter-net based personal journal (“blog”) that is not owned or controlled by a candidate or committee is not required to include an attribution statement disclosing who paid for the costs of the blog. A political advertisement on a blog is required to include the appropriate attribution statement disclosing who paid for the advertisement.

IOWA FINANCE AUTHORITY

10:50

Recovery Zone Bond Allocation, IAB XXXII No. 23 ARC 7809B, EMERGENCY.

2010 Iowa Acts, House File 2487, by provides for recovery zone bonds; there are two types: recovery zone economic development (“RZED”) bonds and recovery zone facility (“RZ facility”) bonds. This program was created in the federal *American Recovery and Reinvestment Act* in 2009. The bonds may be used to finance business development activities in areas of significant economic distress. A Recovery Zone is an area having significant poverty, unemployment, home foreclosures, or general distress; or an area that has already designated as an empowerment zone or renewal community. Iowa may issue up to \$90 million of RZED bonds and up to \$135 million of RZ facility bonds.

CIVIL RIGHTS COMMISSION

11:10

General updates, IAB XXXII No. 23 ARC 8733B--8750B, ADOPTED.

The Commission begins 18 rulemaking procedures, containing a variety of amendments that update current provisions. Some of the proposed amendments include:

Changes in filing and delivery. The rules provide for the use of electronic filing using an online case management system. The rules include procedures for the use of “e-mail” in sending documents to the Commission. The Commission will now notify respondents in a complaint by “regular” mail. If the respondent does not answer, certified mail will be used.

Update rules for mediation. An alternative to an investigation and a contested case, mediation is a neutral, negotiating process, where parties attempt to negotiate a no-fault predetermination settlement for the purpose of amicably resolving the complaint.

The process for investigations is modified by allowing the administrative law judge to participate and direct the investigation. A commission investigator may confer with, be

THE RULES DIGEST

-5-

assisted by, or be directed by the administrative law judge during the investigation. The administrative law judge may participate in the investigation and engage in private communications with the parties or their counsel. The administrative law judge may then issue a “probable cause” determination, which will trigger a contested case hearing before the commission.

LABOR SERVICES DIVISION

1:15

Mixed martial arts, IAB Vol. XXXII, No. 23, ARC 8752B, NOTICE.

This rulemaking proposes changes to the Division’s rules governing the issuance, revocation, and denial of boxer registrations and proposes changes to implement 2010 Iowa Acts, Senate File 2286, relating to mixed martial arts events. The proposed rules adopt several new definitions and make editorial and technical changes including removing references to “shoot fighting”. The rules also require a promoter to provide the Labor Commissioner written notice of an event at least 30 days in advance, require a promoter to ensure an authorized emergency medical technician transport service is on site during an event, and set forth requirements for an event license.

The rules also establish specific requirements for holding a mixed martial arts event, including the all of the following: requiring three judges and two referees; setting forth scoring procedures; increasing the allowed size of a cage; changing the requirements for weighing a contestant; prohibiting officials and participants from threatening any person; clarifying who may be present in a cage change the limits on the length and number of rounds in a match; expanding the list of fouls; setting forth appropriate responses to fouls; and banning overtime.

PUBLIC HEALTH DEPARTMENT

1:30

Volunteer health care provider program, IAB XXXII No. 20, ARC8627B, ADOPTED.

The volunteer health care provider program (VHCPP) has been in effect since 1994. This filing is a general update of existing provisions. The VHCPP is established to legally defend and indemnify eligible individual volunteer health care providers and protected clinics providing free health care services as provided in Iowa Code § 135.24. The state will pay all damages that a individual volunteer health care provider or protected clinic holding a protection agreement with the VHCPP is legally obligated to pay because of any claim made against the individual volunteer health care provider or protected clinic which arises out of the provision of free health care services rendered or which should have been rendered.

THE RULES DIGEST

-6-

The rules specifically delineate the services that can be provided by each profession; only those specified services are eligible for this protection. To participate in the program, an individual health care provider must:

- hold a license or certification;
- describe any disciplinary action and malpractice lawsuit that has ever been taken against the licensee;
- describe the patients to be served, the *free* health services to be provided, and the location; and
- sign an agreement that identifies the site and the services.

A clinic may also participate in the program, with an agreement similar to that used for individual health care providers, identify the clinic site, the patient groups served, and the *free* services provided.

Similar to the process for denial, suspension or revocation of a professional license, these agreements can be denied, suspended, or revoked, following a due process hearing.

NATURAL RESOURCES COMMISSION

1:45

Alcohol usage-beaches in the Iowa Great Lakes, IAB XXXII No. 25 ARC 8814, NOTICE.

Allegations of rampant alcohol consumption and rowdy behavior has resulted in this proposal to ban alcohol over the Fourth of July holiday weekend at Okoboji state beaches; the NRC has declined to adopt these provisions on an “emergency” basis, insisting on a public hearing before a decision is made.

Under these rules beer and wine still would be allowed at campgrounds, lodges, shelters and picnic areas away from the beaches. Alcohol would be allowed at beaches at the state parks at other times. Alcohol is already banned at municipal beaches in the area.

The exact number of days the ban would be in effect will vary from year-to-year depending on the calendar. The NRC has considered this issue over the past year and will hold a public hearing on this rule on June 22, at 6:30 p.m. in Gull Point State Park lodge along West Okoboji Lake.

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Permits for special events, IAB Vol. XXXII, No. 25 ARC 8815B, ADOPTED.

The Commission previously had permit requirements only for boating events. These provisions create a general set of rules applying to boating, ATV and snow events, such as an organized race, tournament, exhibition, or demonstration. The Commission may

THE RULES DIGEST

-7-

impose special conditions for any special event if deemed necessary to protect the resource or to ensure public safety. The fee for each event is 25 dollars.

HUMAN SERVICES DEPARTMENT

2:15

Child care quality rating system, IAB Vol. XXXII, No. 24, ARC 8757B, NOTICE.

The Department is proposing amendments to update the child care quality rating system by removing some criteria, adding additional criteria, and recalibrating the points within the system and the total points required for each level. The system has been in operation for three years and during that time the Department's has become aware of needed changes in order to make the awarding of points more equitable. This rulemaking include the following changes:

- Clarification that there are separate application forms for child development homes and for centers and preschools, to present the requirements for each provider type more clearly.
- A limit on applications for a Level 1 rating to one 24-month period. Subsequent applications by the same provider must be for a higher level.
- Removal of requirements for the child care business-partnership agreement and the director/owner survey for a Level 2 rating.
- More points required for Levels 3 to 5 to allow scoring of more variables in each category and to give more weight to facility accreditation and to higher educational achievement by staff.
- Addition of points for parent meetings and parent satisfaction surveys used to inform program practices.
- Requirement of a minimum score of 5.0 on the applicable environment rating scale to receive a Level 5 rating.

The amendments also provide for a six-month transition period during which providers may apply for a quality rating under either the current standards or the new standards.

INSURANCE DIVISION

No Rep.

Annuity products, IAB Vol. XXXII, No. 23, ARC 8768B, NOTICE.

This proposal amends the Division's rules governing the sale of annuity products; the amendments are based on a national model and will be effective January 1, 2011. Current rules require that an insurance producer or insurer must believe that an annuity product is suitable for the consumer. The proposal adds detailed criteria for this determination, including:

- The consumer has been reasonably informed of various features of the recommended annuity;
- The consumer would benefit from certain features of the annuity;
- The particular annuity is suitable for the particular consumer.

The insurance producer or insurer must document any recommendation made for an annuity product and must document the situation where the customer purchases an annuity not based on the insurance producer's or insurer's recommendation. The

THE RULES DIGEST

-8-

insurer has the responsibility to provide producer training for annuity products and to review of each recommendation prior to issuance of an annuity. The insurer must also have a procedure to detect recommendations that are not suitable. The producer must have adequate knowledge of the product to recommend an annuity. The proposal requires an initial training course of four credits, either by classroom or independent study.

NATURAL RESOURCES COMMISSION

No Rep

All-terrain vehicles, IAB Vol. XXXII, No. 23, ARC 8730B, NOTICE.

This rulemaking proposes a new chapter 46 that includes three new divisions. The rules in division I clarify the procedures for registration, renewal, titling, decal placement and accident reporting for all-terrain vehicles, off-road motorcycles and off-road utility vehicles. Division II of the new chapter establishes minimum standards for all-terrain vehicle dealers as authorized under Iowa Code § 321I.22(9). Division III provides for the regulation of designated off-highway vehicle riding areas. In addition, the Commission's rules related to bonding requirements that are currently included in chapter 46 are proposed to be moved to new chapter 50, "All-Terrain Vehicle, Off-Road Motorcycle, Off-Road Utility Vehicle, Snowmobile and Vessel Bonding" (**ARC 8732B**).

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Snowmobiles, IAB Vol. XXXII, No. 23, ARC 8731B, NOTICE.

This rulemaking proposes a new chapter 47 that includes two new divisions. Division I clarifies the procedures for registration, renewal, titling, decal placement and accident reporting for snowmobiles. Division II of the new chapter establishes minimum standards for snowmobile dealers as authorized under Iowa Code § 321G.21(9). In addition, the Commission's rules related to bonding requirements that are currently included in chapter 47 are proposed to be moved to new chapter 50, "All-Terrain Vehicle, Off-road Motorcycle, Off-road Utility Vehicle, Snowmobile and Vessel Bonding" (**ARC 8732B**).

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Special nonresident deer and turkey licenses, IAB XXXII No. 24, ARC8753B, ADOPTED.

This program has been in effect since July 2009. The filing relates to the procedures and requirements for the issuance of special nonresident deer and turkey licenses authorized in Iowa Code § 483A.24. A Department committee reviews and ranks the summaries of the applications for the special license. The summaries are prepared by

THE RULES DIGEST

-9-

the program coordinator. The legislative committee considers the applications and makes final selection of the special license recipients. Selections are based on which conservation organizations and hunters are best qualified to promote the state and its natural resources. The rules provide several examples of the types of requests that legislative committee may consider.

The rules establish ranking criteria for the applicants; but the Department committee is allowed to “exercise its discretion.” Points are awarded based on criteria such as the relative size of the hunter's potential audience, the hunter's proposal to promote the state and its natural resources, and a hunter's previous use of a special license. Certain conservation organizations and hunters are automatically forwarded to the legislative committee for consideration. Requests from an entity or person that has been found guilty of a game violation in Iowa or elsewhere within the past five years or that, in the opinion of the committee, has exhibited poor hunting ethics or judgment will not be considered for a special license.

The rules also establish the length of term for special licenses, reporting requirements for each recipient of a special license, special license costs, and hunter safety requirements.

SECRETARY OF STATE

No Rep

Election forms and instructions, IAB Vol. XXXII, No. 23, ARC 8708B, NOTICE.

The Secretary of State has proposed this subrule to provide voters and other interested persons with the opportunity to review the summary to be printed on the ballot for the proposed constitutional amendment that is to be voted upon at the November 2, 2010, General Election. The only purpose for this Notice is to solicit public comments; following the comment period the Notice will be terminated without adopting the subrule. Public comment will be collected through Tuesday, May 25, 2010.

PUBLIC SAFETY DEPARTMENT

No Rep

State building code, IAB Vol. XXXII, No. 24, ARC 8770B, Notice, ARC 8771B, FILED EMERGENCY.

The State Building Code Commissioner, with the approval of the Building Code Advisory Council, is authorized by Code to adopt provisions of the State of Iowa Building Code. As part of the general adoption of new editions of nationally recognized codes which are adopted by reference within the State Building Code, effective January 1, 2010, requirements were included to provide that all newly constructed one- and two-

THE RULES DIGEST

-10-

family residences and townhouses be equipped with fire sprinklers. These requirements were amended to delay the implementation date after which sprinklers would be required until January 1, 2013. At its December 2009 meeting members of the Administrative Rules Review Committee expressed great concern over the cost of such a sprinkler requirement and noted there was little evidence documenting the added safety benefits that would be provided. The Committee determined this specific requirement should be delayed and sent that portion of the rulemaking to the General Assembly for additional study and action.

During its 2010 Session, the Iowa General Assembly adopted 2010 Iowa Acts, Senate Joint Resolution 2009, which nullified “portions of 661 Iowa administrative code, rule 301.8, that adopt by reference sections R313.1 and R313.2 of the international residential code, 2009 edition, and that amend sections R313.1 and R313.2, by deleting and inserting in lieu thereof and providing exceptions thereto.” This rulemaking rescinds the whole of rule 661—301.8(103A) in which the International Residential Code, 2009 edition, is adopted by reference and readopts the International Residential Code, 2009 edition, with all of the amendments originally adopted except that the two sections which require installation of residential sprinklers are deleted. In addition, two amendments to the adoption of the 2009 edition of the International Residential Code which were not included in its previous adoption are added; these restore fire safety-related provisions from the previous (2006) edition of the International Residential Code which were lessened in the 2009 edition because the inclusion of sprinkler systems in new residential construction was assumed.