



**Administrative Rules Review Committee**

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# THE RULES DIGEST

November, 2005

**Scheduled for committee review**  
**Tuesday, November 8<sup>th</sup> 2005**  
**Senate Room #116**

Reference  
XXVIII IAB No. 08 (10/12/05)  
XXVIII IAB No. 09 (10/26/05)

**HIGHLIGHTS IN THIS ISSUE:**

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**HUMAN SERVICES DEPARTMENT**

9:10

Children’s mental health services waiver, IAB Vol. XXVIII, No. 8, ARC 4562B, EMERGENCY.

The federal government has approved a new demonstration waiver, administered as a Medicaid home and community based services (HCBS) waiver. This project, for up to 300 children under the age of 18, will provide in-home support services for children suffering from a “serious emotional disturbance” who would qualify for care in a psychiatric hospital. Available services will include: environmental modifications, adaptive devices and therapeutic resources; family and community support services; in-home family therapy; and respite care for the primary care givers.

**COLLEGE STUDENT AID COMMISSION**

9:30

Forgivable loans for nursing, IAB Vol. XXVIII, No. 8, ARC 4596B, NOTICE.

2005 Iowa Acts, House File 882, § 47 allocated up to \$50,000 for a program to provide forgivable loans to recruit Iowa residents who are registered nurses to become nursing faculty in Iowa colleges and universities. The college student aid

commission proposes rules for the administration of the registered nurse recruitment program.

To be eligible for a forgivable loan, the student is required to have a bachelor’s degree in nursing and must be enrolled full-time as a graduate student at an Iowa college or university. An annual award of up to \$4,000 may be awarded, depending on the student’s financial need. To receive a forgivable loan, the student must sign a promissory note agreeing to teach full time for 5 years at an Iowa college or university or repay the loan with accrued interest. The rules provide additional loans terms, e.g. for cancellation, repayment, deferral, and restrictions.

**LAW ENFORCEMENT ACADEMY**

9:40

Minimum standards for law enforcement officers, IAB Vol. XXVIII, No. 9, ARC 4591B and 4592B, NOTICE.

Current standards require that a peace officer have normal hearing in each ear. This proposal would relax that standard somewhat. Applicants who: 1) do not have normal hearing, 2) have certain medical conditions that affect hearing, or 3) wear a hearing aid, must obtain a professional hearing evaluation. The rule outlines, in detail, the standards for the test. Hearing aids will now be allowed, subject to standards set out in the rule.

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ARC 4592B revises the emergency care standards for peace officers. Currently officers are trained in crash injury management. Under the proposal. Under the new standards, the Iowa Law Enforcement Emergency Care Provider (ILEECP) standards, peace officers must complete training in the use of the external defibrillator and foreign body airway obstruction.

### REVENUE DEPARTMENT

10:30

The Streamlined Sales And Use Tax Act, IAB Vol. XXVIII, No. 9, ARC 4573B, NOTICE.

In 2003 the legislature enacted The Streamlined Sales And Use Tax Act, which is a model to simplify and update sales and use tax collection and administration on a nationwide-basis. The Act includes tax law simplifications, and revised administrative and collection procedures. Some 38 states were involved in the national project to create this model legislation; Iowa was a participating state.

This national ongoing project has two components: first, states adopt enabling legislation referred to as the "Uniform Sales and Use Tax Administration Act". The Act allows the state to enter into an agreement with other states to simplify and modernize sales and use tax administration in order to reduce the burden of tax compliance for all sellers and all types of commerce. The model itself did not require any amendments to a state's sales and use tax law. Secondly, states amend their sales and use tax laws to provide the simplifications and uniformity necessary. There is a national governing board comprised of representatives of each member state which oversees compliance. A certificate of compliance will document compliance with the provisions of the national agreement and provide documentation of that compliance. Iowa has created an advisory group, made up of taxpayers, department officials and other tax professionals to review and hopefully resolve issues that will arise concerning the implementation of this Act.

### INSURANCE DIVISION

11:10

Adoption by reference, IAB Vol. XXVIII, No. 8, ARC 4570B, NOTICE.

2005 Iowa Acts, House File 420 creates a new insurance coverage requirement relating to biologically based mental illness coverage. The Act specifically enumerates the following covered disorders:

schizophrenia	bipolar disorders
major depressive disorders	schizo-affective disorders
obsessive-compulsive disorders	pervasive developmental disorders
autistic disorders	

These terms are technical medical terms with precise meaning and the Act requires the division to adopt:

"[d]efinitions ...consistent with definitions provided in the most recent edition of the American psychiatric association's diagnostic and statistical manual of mental disorders *as such definitions may be amended from time to time*. The commissioner may adopt the definitions provided in such manual by reference."

The language of the Act shows a clear legislative intent to delegate to the American psychiatric association the power to define these terms, now and in the future. There has always been an issue that an adoption by reference, without a "date certain" limiting the adoption to language currently in place, is an undue delegation of legislative power. Adopting the manual definitions and any future revision actually delegates to the American Psychiatric Association, a private out-of-state organization, the power to establish Iowa law, without further scrutiny or approval by the constitutionally established law-making body in this state.

There is also a pragmatic issue; without a date certain, how is a reader to know which version is the most recent. A date certain fixes the referenced language to existing material, and any future amendment to that material must be then approved by the legislature, by establishing a new date certain.

There is some legal authority on this issue, in the form of a 1982 Opinion of the Attorney General, Ovrum to Ballou. The opinion related to adopting federal regulations without a date certain. In part the opinion stated:

*"In general, a state legislature can incorporate existing federal laws and regulations, but cannot incorporate future federal laws or regulations, because adoption of future*

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*federal actions would be a total delegation of legislative authority to the federal government [cites omitted]."*

It should also be noted that even without a "date certain", Iowa law requires that a copy of the referenced material be purchased and kept in the State law library; §17A.6(4) provides:

*"4. An agency which adopts standards by reference to another publication shall purchase and provide a copy of the publication containing the standards to the administrative rules coordinator who shall deposit the copy in the state law library where it shall be made available for inspection and reference."*

### ECONOMIC DEVELOPMENT DEPARTMENT

1:20

Iowa wine and beer promotion, IAB Vol. XXVIII, No. 8, ARC 4583B, NOTICE

The department in consultation with the Iowa wine and beer promotion board is charged under §15E.117 to promote wine and beer made in Iowa. Funds for this promotion come from a barrel tax imposed on wine and beer pursuant to chapter 123, Iowa Code.

This new proposal is an Iowa wine and beer promotion grant program providing marketing funds to promote native Iowa wineries and breweries through festivals and events. Applicants must include a group of at least three native Iowa wineries or breweries, unless there are fewer than three licensees in either category. If there are fewer than three licensees in a category, then all of the licensees in that category must be included in the event. There shall be a maximum of one award per group per fiscal year.

### NATURAL RESOURCE COMMISSION

1:45

Whitetail deer hunting preserves, IAB Vol. XXVIII, No. 9, ARC 4585B, EMERGENCY.

The regulation of deer hunting preserves has been an issue since 2003, when legislation transferred the regulation of domesticated deer to the Department of Agriculture and Land Stewardship from the Department of Natural Resources. At that time the Agriculture Department adopted initial rules relating to hunting preserves, however, opponents resisted limits on the size of the preserve, the fencing requirements,

the tagging requirements and most particularly, they objected to the \$1,000 annual fee.

2005 Iowa Acts, Senate File 206, §§14 to 26 regulates the establishment and operation of whitetail hunting preserves. The Act provides that a landowner may keep whitetail deer on a hunting preserve enclosed with a fence as a business to give persons the opportunity to hunt whitetail deer. Violation of the Act is a simple misdemeanor. The Department Of Natural Resources now proposes rules to implement the Act and manage whitetail hunting preserves. The rules include the following requirements:

- an annual registration and fee of \$350 (the maximum allowed under the Act) in order to operate a whitetail hunting preserve;
- boundary signs to be posted at each entrance and perimeter gate and at every boundary corner stating "Registered Hunting Preserve";
- a "deer proof" boundary fence, to prevent co-mingling of domesticated and wild deer, constructed and maintained with a minimum fence height of 8 feet above ground level and subject to department inspection;
- an annual activity report including documentation of purchase and delivery of any whitetail to the registrant;
- transportation tags, purchased from the department for \$1 per tag, to be placed on a leg of each whitetail harvested on a hunting preserve;
- testing for chronic wasting disease and reporting, quarantine, eradicating of the disease; a sample must be taken from any whitetail that dies or is killed on the premises or shipped to slaughter. A positive test result for chronic wasting disease will result in a minimum of a five-year quarantine on the preserve and all remaining animals located within the infected preserve. No animal movement in or out of the preserve shall occur during the quarantine period. An eradication plan must be implemented.

### REAL ESTATE COMMISSION

2:00

Prohibited practices-out of state licensees, IAB Vol. XXVIII, No. 9, ARC 4584B, NOTICE.

Iowa Code §543B.60A was enacted in 1999 to prohibit the practice of requiring a buyer to use the services of a particular broker or salesperson. Effective 7-1-2005, the prohibition was further clarified by HF 882 to clarify and prohibit real estate practices that interfere with contractual arrangements, place improper restrictions on consumer choice, compromise a licensee's fiduciary obligations, and create conflicts of interest. The revised statutory language provides:

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## 543B.60A Prohibited Practices.

1. A licensee shall not request a referral fee after a bona fide offer to purchase is accepted.
2. A licensee shall not request a referral fee after a bona fide listing agreement has been signed.
3. A licensee shall not offer, promote, perform, provide, or otherwise participate in any marketing plan that requires a consumer to receive brokerage services, including referral services, from two or more licensees in a single real estate transaction, as a required condition for the consumer to receive either of the following:
  - a. Brokerage services from one or more of such licensees.
  - b. A rebate, prize, or other inducement from one or more such licensees.
4. For purposes of this section, "consumer" shall include parties or prospective parties to a real estate transaction, clients or prospective clients of a licensee, or customers or prospective customers of a licensee.
5. This section does not address relationships between a broker and the broker associates or salespersons licensed under, employed by, or otherwise associated with the broker in a real estate brokerage agency.
6. A violation of this section is deemed a violation of section 543B.29, subsection 3.
7. The purpose of this section is to prohibit licensee practices that interfere with contractual arrangements, place improper restrictions on consumer choice, compromise a licensee's fiduciary obligations, and create conflicts of interest.

The proposed rule clarifies the H.F. 882 prohibitions to include persons who are not licensed in Iowa but who are licensed in another state or in a foreign country.

These prohibited types of arrangements have become a greater problem as use of the internet has provided out-of-state brokers and salespersons with greater access to Iowa markets. The issue has arisen that the bare language of the statute applies only to a "licensee", meaning an Iowa-licensed broker or salesperson. Under that very narrow interpretation, a person licensed in some other jurisdiction was not subject the statutory restrictions. However, the intent of the language was to prohibit certain types of business activity, regardless of the jurisdiction of the licensee.

## ADMINISTRATIVE SERVICES DEPARTMENT

2:15

State vehicle fleet: E85, IAB Vol. XXVIII, No. 9, ARC 4590B, NOTICE.

Executive Order 41 was signed in April, 2005. That order generally related to energy efficiency in state government and in part V. states:

V. All agencies shall ensure that 100% of the non-law enforcement, light-duty vehicles procured by 2010 shall be alternative fuel vehicles (as defined by Iowa Code Section 8A.362(5)) or hybrid-electric vehicles when an equivalent alternative fuel or hybrid-electric model is available. Furthermore, agencies shall ensure that their flexible fuel vehicles operate on E85 whenever an E85 fueling facility is available.

To implement this gubernatorial directive the department rule requires state agencies to use 85 percent ethanol (E85) for "flexible fuel vehicles whenever an E85 fueling facility is available; when such fuel is not available the driver is not to completely fill the tank with fuel when a lesser quantity will be adequate to complete the trip to an E85 fueling site.

Procurement specifications for all non-law enforcement, light-duty vehicles will be for flexible fuel vehicles, when available. A "flexible fuel vehicle is defined if §8A.362(5), Iowa Code; the term includes a variety of renewable fuels, including an 85% blend of ethanol.

Procurement specifications for bulk diesel fuel calls for all bulk diesel procured has at least 5 percent renewable content by 2007, 10 percent renewable content by 2008, and 20 percent renewable content by 2010.

## SECRETARY OF STATE

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Approved voting systems, IAB Vol. XXVIII, No. 8, ARC 4564B, NOTICE.

Section 52.5 requires a board of examiners to test and examine of all voting systems. Before actual use of a particular approved electronic voting system the state commissioner of elections must adopt, with the advice of the examiners, rules governing the development of vote counting programs and all procedures used in actual counting of votes by means of that system. This proposes sets out standards for the use of an additional system, using an audio ballot for visually impaired persons.