



Administrative Rules Review Committee

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THE RULES DIGEST

February 2009

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Senate Committee Room #116

Reference
XXXI IAB No. 15(01/14/09)
XXXI IAB No. 16(01/28/09)

HIGHLIGHTS IN THIS ISSUE:

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ADMINISTRATIVE SERVICES
DEPARTMENT

9:10

Vendor liability, information technology procurement, XXXI IAB 15, ARC 7509, ADOPTED.

These provisions were initially published as a notice in June, 2008, and reviewed by the Committee in July. The rule relate to the purchase of information technology (IT) by the state, specifically placing limits on vendor liability for damages that might result from use of that technology. The failure of computer software or hardware can have unpredictable liability consequences, depending on the number of people affected by the failure and the impact of that failure. Potential liability can far exceed the value of the IT company itself and can make it difficult or impossible for an IT company to obtain insurance to mitigate that risk. For that reason, contracts for goods and services in private business often limit the liability of the IT vendor to a specific amount or an amount based on the function or size of the contract.

Code §8A.311(21) requires that the Department establish a policy for determining when limitation of vendor liability may be acceptable in state

procurements for goods and services. These provisions apply only to procurements by the Department or on behalf of another state agency.

Criteria for limiting vendor liability include (but are not limited to) situations where:

- A limitation is necessary to prevent a failure to obtain the goods or services sought, or obtaining the goods or services at a higher price if the state refuses to allow a limitation of liability;
• A limitation is commercially reasonable when taking into account any risk to the state created by the goods or services to be procured and the purpose for which they will be used.
• If not doing so could result in procurement of a lower quality good or service.

The statute prohibits any limitation on liability for intentional torts, criminal acts, or fraudulent conduct. The rules expand on the statutory provisions by including in the prohibition such things as: intentional or willful misconduct, gross negligence, claims related to death, bodily injury, or damage to real or personal property. Certain contractual obligations cannot be limited: indemnification, intellectual property, insurance, bonds, liquidated damages, compliance with applicable laws, confidential information, or express representations and warranties.

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ACCOUNTANCY BOARD

9:25

General re-write, IAB XXXI No. 15, ARC 7484B, NOTICE.

2008 Iowa Acts, chapter 1106 was a general update of the licensing law relating to certified public accounting. The most significant change from prior law is that an individual holding certificate or license to practice as a certified public accountant in another state is automatically presumed to have qualifications substantially equivalent to Iowa requirements and has all the privileges of Iowa certificate holders without the need to obtain an Iowa certificate. This privilege includes individuals providing accounting services, in person or by mail, telephone, or electronic means. Attest and certain other services are limited to individuals employed by a firm holding an Iowa permit. An accounting firm that is not licensed in this state may offer other accounting services.

An individual providing services in Iowa under this privilege is subject to the jurisdiction of Iowa courts and Board.

EDUCATION DEPARTMENT

9:40

Nutrition standards, IAB Vol. XXXI, No. 15, ARC 7503B, NOTICE.

2008 Iowa Acts, Senate File 2425, §§140 and 141 mandated the development of nutritional content standards for foods and beverages sold or provided on school grounds during the school day. The Act also created a nutrition advisory panel to make findings and recommendations, based on the dietary guidelines for Americans published by the federal government. The Department is to consider these findings and recommendations when establishing or amending the nutritional content standards.

Generally speaking, the nutritional standards apply to ala carte items or "snack food" sales in vending machines; the rules do not apply to the nutritional content of food or beverages provided through a school breakfast program or school lunch program, sold for fundraising purposes, sold at concession stands, provided by parents, other volunteers, or students for class events, or

provided by staff for the consumption by staff or students.

The standards are set out in the form of a grid, setting limits for calories, total and saturated fats, trans fat, sugar, dietary fiber and sodium. Carbonated beverages and coffee are banned.

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Physical activity requirement, IAB Vol. XXXI, No. 15, ARC 7504B, NOTICE.

2008 Iowa Acts, Senate File 2425, §§139 and 144 are entitled the "Healthy Kids Act". In part the Act requires that all physically able grades K through 5 students engage in a physical activity for a minimum of thirty minutes per school day. The department is required to establish a working group comprised of education and fitness professionals, along with stakeholders to assist in the creation of daily physical activity opportunities and requirements and developing physical activity models.

All physically able grade 6 through 12 students are required to engage in a physical activity for a minimum of one hundred twenty minutes per week. By the end of grade 12 every student must complete a certification course for cardiopulmonary resuscitation. A student is not required to meet the physical activity or the cardiopulmonary resuscitation requirements if the student's parent or guardian files a written statement with the school principal that the requirement conflicts with the pupil's religious beliefs.

These requirements may be met by a variety of activities, including: Interscholastic athletics; School-sponsored marching band, show choir, dance, drill, cheer, or spirit activities; Non-school gymnastics, dance, team sports, individual sports; or similar endeavors that involve movement, manipulation, or exertion of the body. Non-school activities must be separately documented.

Regular instructional time may not be reduced to meet these requirements.

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Competent private instruction: teacher qualifications, IAB Vol. XXXI, No. 15, ARC 7502B, ADOPTED.

The Department revises the rules that give guidance to parents, guardians, and custodians,

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school boards, and teachers regarding the assistance and supervision requiring to provide "competent private instruction" to children of compulsory attendance age outside the traditional school setting.

The rules were initially reviewed in November, 2008 as a notice of intended action. At that meeting some controversy surrounded provisions which would differentiate between the duties of supervising teachers who are privately retained by families and those hired by a school district to provide a home school assistance program. The rules also addressed content area endorsement requirements and limited teachers who only possess a substitute authorization. During the public participation process in the Fall of 2008 most of the concerns centered around limitations placed on the provision of instructional materials and the licensure or authorizations required for certain teachers in a home school setting. School districts which provide a home school assistance program must employ a teacher with the appropriate certificate or license. For a teacher providing actual instruction, the license or certificate must be appropriate *both* to the content area taught and to the grade level of the student. For a teacher providing only supervision, the license or certificate must be appropriate to the grade level of the student.

A teacher that is retained privately must hold a license or certificate which is appropriate to the grade level of the student. The teacher may not supervise the instruction if the teacher holds only a valid substitute authorization.

ECONOMIC DEVELOPMENT DEPARTMENT

10:20

Renewable fuels infrastructure, IAB XXXI No. 4, ARC 7506B, ADOPTED.

The Department adopts a number of revisions to the renewable fuels infrastructure program. 2008 Iowa Acts, House File 2689 made a number of changes to the infrastructure program. The Act provides program coverage to infrastructure at retail sites and expands coverage to include so-called blender pumps which mix types of motor fuel and may allow individual selection of the percent of either ethanol or biodiesel.

The Act revises cost-sharing, providing for a three-year period under which the infrastructure board awards 50% of the actual cost of making the improvement or \$30,000, whichever is less or a five-year period under which the infrastructure board awards 70% of the actual cost of making the improvement or \$50,000, whichever is less. The proposed rules add provisions for supplemental incentives for retail sites, terminal facilities, and tank vehicles.

The rules also revise the current repayment waiver provisions, revising the sliding-scale repayment provisions to fit the three or five year cost-share agreements.

IOWA FINANCE AUTHORITY

10:30

Qualified Midwestern disaster area bond allocation, IAB Vol. XXXI, No. 15, ARC 7511B, EMERGENCY.

These emergency provisions create a process to issue and sell Midwestern disaster area bonds, as permitted by the federal Heartland Disaster Tax Relief Act of 2008. That Act is intended to assist with the recovery from the severe weather that affected the Iowa during the summer of 2008 by providing temporary tax relief to assist with the recovery from the severe storms, tornadoes, and flooding. The Act allows IFA to issue \$2,000,000,000 in tax-exempt bonds to finance qualified activities involving residential rental projects, nonresidential real property, and public utility property located in the disaster area; and below-market-rate mortgages for Iowa and moderate-income homebuyers whose principal residences were damaged by the flood. Each Iowa county is allocated a portion of these funds based on disaster-related need.

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Council on homelessness, IAB Vol. XXXI, No. 15, ARC 7511B, EMERGENCY.

These emergency provisions implement 2008 Iowa Acts, Senate File 2161. That Act creates a 38 person advisory council, with a membership that represents: homeless individuals and their family members, youth shelters, faith-based organizations, local homeless service providers, emergency shelters, transitional housing providers, family and domestic violence shelters, private business, local government, and community-based

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organizations. Membership also includes 12 ex officio voting members from various agencies.

The council is staffed by IFA and will meet at least six times per year. The council is tasked with a long list of responsibilities, all of which revolve around defining the scope and nature of the homeless problem and finding solutions to that problem. The council is required to make annual recommendations to the governor regarding homelessness issues prepare a biennial report on homelessness in Iowa.

PUBLIC HEALTH DEPARTMENT

11:00

Tattooing requirements, IAB Vol. XXXI, No. 16, ARC 7530B, NOTICE.

The department proposes a general re-write of existing rules governing the licensure and practice of tattooing, current rules have been in place since 1989. the practice has grown significantly, there are now 532 license tattoo artists in Iowa, up from fewer than 150 a decade ago.

While much of the revision is simply updating current language, the proposal does present several significant changes. Current rules allow for in-home shops, completely separated from living quarters; the proposed rules require a completely separate establishment.

The proposed changes would more than double annual fees for shop owners; increase inspection fees; and require training on how to prevent infectious disease and perform first aid. Department representatives note that the fees have not been revised since 1989.

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Breast and cervical cancer early detection program, IAB Vol. XXXI, No. 16, ARC 7538B, NOTICE.

Screening and early detection for breast and cervical cancer are funded through a federal program; Iowa has participated since 1993. A variety of clinical procedures are provided though the program.

Participation is limited to women with incomes less than 250 percent of the federal poverty level; under the program:

- Women 50 through 64 years of age shall be the priority population to receive annual breast and
- cervical cancer screening.

- Women 40 through 49 years of age shall receive annual breast and cervical cancer screening.
- If symptomatic for breast cancer, women under 40 years of age shall receive services.
- Women 65 years of age and older shall be eligible to receive annual breast and cervical cancer screening if they do not have Medicare Part B coverage.

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Licensure of plumbers and mechanical professionals, IAB XXXI No. 15, ARC 7517B, EMERGENCY AFTER NOTICE.

2007 Iowa Acts, chapter 198, and 2008 Iowa Acts, House File 2390 provide for the licensure plumbers and mechanical professionals. A person employed by any unit of state or local government is exempt from licensing requirements if the person only performs routine maintenance.

This legislation establishes a license for persons who provide plumbing, heating, ventilation, and air conditioning (HVAC) services performed in ducted systems, all gas lines associated with any component of a plumbing or mechanical system, or services performed on refrigeration or hydronic systems. These rules establish a licensing board, as part of the Department of Public Health, to test, license, and discipline persons licensed under the new law.

Licenses come in three categories and vary according to experience: apprentice, journeyman, and master. Master licensees must present proof of liability insurance as a condition of licensure. All applicants must be at least 18 years old; and, effective January 1, 2010, all apprentice applicants must have completed a high school education or attained GED equivalent. Applicants must have no record of felony conviction relating to the profession.

Because of the variety of licenses, the license fee structure is somewhat complicated. The initial examination fee is \$35 and a one month late fee is \$60. Specific licenses, including the initial licensure and renewals are as follows:

An apprentice license \$50.

A journey license is \$100.

A master license is \$250.

A combined license is the sum total of each of the separate license fees.

A medical gas pipe certificate is \$50.

An inactive license is \$50.

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HUMAN SERVICES DEPARTMENT

11:20

Medicaid reimbursement for mileage, IAB Vol. XXXI, No. 15, ARC 7483B, ADOPTED.

These provisions were initially filed on an emergency basis, published in September, 2008. This filing provides an increase in mileage reimbursements for non-emergency medical transportation of Medicaid recipients. At the October review Committee members were concerned over the increased costs for these reimbursements, noting that the mileage increase on Medicaid transportation will impact 75 percent of medical transportation claims, costing \$303,000 in FY 2009 and \$393,000 in FY 2010. The mileage increase for promise jobs will cost \$488,000 in FY 2009 and \$605,000 in FY 2010. Committee members questioned whether it was appropriate to commit to higher reimbursements when the economic future remains uncertain.

infrastructure aid necessary for a fair to make improvements to the permanent infrastructure of its fairgrounds, including the construction, major renovation, or major repair of buildings, structures, or utilities. The fair must provide a cost-share with the state fund contributing two dollars for each dollar contributed by the fair. The in-kind support included in the matching funds cannot exceed 35 percent. The aid awarded cannot be less than \$5,000 or more than \$50,000 during any fiscal year.

REVENUE DEPARTMENT

No rep requested

Sales tax increment financing district, IAB Vol. XXXI, No. 16, ARC 7531B, NOTICE.

The 2008 Iowa Acts, chapter 1191, §§65 through 68 authorizes a city with a local option sales and services tax to enact an ordinance creating a sales tax increment financing district funding urban renewal projects. This district may be created without an election. All or part of the local sales and services tax may be dedicated to the district.

Once the city enacts an ordinance creating the district the department of revenue will identify sales tax permit holders within the specified urban renewal area.

An ordinance under is repealed when the plan for the urban renewal area expires or terminates or 20 years after adoption of the ordinance, whichever is the earlier.

STATE TREASURER

No rep requested

Infrastructure program, IAB XXXI No. 16, ARC 7527B, NOTICE.

2008 Iowa Acts, Senate File 2432 creates a special fair infrastructure aid fund within the office of the State Treasurer to provide