

**TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION**

Control No. 304 Department or Agency Alabama Electronic Security Board of
Licensure

Rule No. 304-X-1-.06

Rule Title: Administrative Complaints

 New X Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? Yes

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? No

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 412223, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer Lynne Lounston

Date June 10, 2011

(DATE FILED)
(STAMP)

ALABAMA ELECTRONIC SECURITY BOARD OF LICENSURE

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Electronic Security Board of Licensure

RULE NO. & TITLE: 304-X-1-.06 Administrative Complaints

INTENDED ACTION: To Amend Rule

SUBSTANCE OF PROPOSED ACTION:

In (1)(c), delete “of assignment to the investigative committee” and add “review, investigation, responses, and disciplinary action.” Add (1)(d) that AESBL may contract for the services of an investigator. Add (1)(e) providing licensees 30 days to respond to a complaint. Old (1)(d) changed to (1)(f) after deadline for response a complaint may be referred to Investigative Committee to proceed with disciplinary action or close. In (2)(a), change director to secretary and that Board member shall be assigned on a rotating basis and add that Chairman may assign Board member to Committee. In (2)(c) delete “contract for the services of an investigator” and add “require the licensee to attend a meeting of the Committee”. Delete (2)(d). Change (2)(e) to (d) and add that the Committee shall recommend disciplinary action, the licensee shall be notified and may agree, request a hearing or enter into settlement agreement. Delete Section (3) and renumber (4), (5) and (6). Change new (3)(a) to “Any licensee aggrieved by a decision of the Investigative Committee and who cannot reach an informal settlement with Board counsel regarding disciplinary action may request a hearing within thirty (30) days.” In (3)(c) add “Chair of the Board or”. In (3)(g) delete rebuttals and authority to order closing arguments in writing and add possibly waiving opening or closing arguments. Change (4)(a) to authorize Board counsel to enter into settlement negotiations on behalf of the Board. Add helpers to (5)(e).

TIME, PLACE, MANNER OF PRESENTING VIEWS:

Written comments may be submitted to; Alabama Electronic Security Board of Licensure, 7956 Vaughn Road, PMB 392, Montgomery, AL 36116.

Public Hearing; Tuesday, August 9, 2011, 9:30 a.m., Alabama Industrial Development Training Center, One Technology Court, Montgomery, Alabama

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

August 9, 2011

CONTACT PERSON AT AGENCY:

**Lynne Taunton, Executive Secretary, Alabama Electronic Security Board of
Licensure, 7956 Vaughn Road, PMB 392, Montgomery, AL 36116**



Lynne Taunton, Executive Secretary

Administrative Complaints**(1) Receiving Complaints**

(a) Complaints alleging that licensees have violated AESBL laws and/or regulations must be submitted in writing on a form created by the Board. Complaints must be signed to be processed. Any person, including a Board member or person employed by the Board or its contractor, may file a complaint.

(b) Whenever a complaint is received, it will be assigned a unique identifying number.

(c) If the Board receives more than one complaint concerning related allegations against the same licensee, the Board may consolidate the complaints for purposes of assignment to the investigative committee review, investigation, responses, and disciplinary action.

(d) AESBL may contract for the services of an investigator to aid in investigating a complaint.

(e) All licensees, having had a complaint filed against them or their company, shall have a minimum of thirty (30) days (from being notified of the complaint) to respond to the complaint or allegations in writing.

(f) After the deadline for the licensee's response to a complaint in writing, Each a complaint will may be referred to the Investigative Committee for a determination of whether the existence of probable cause exists to warrant possible disciplinary action against the licensee to proceed with disciplinary action or to close the complaint.

(2) Investigative Committee

(a) The Investigative Committee will be comprised of one member of the Board, the executive ~~director~~ secretary or his/her designee, and the Board's attorney. The Board member shall be assigned to the Investigative Committee will rotate on an a rotating equitable basis. The Chairman of the Board shall determine the Board member assigned to a particular complaint and may do so upon the request of the executive secretary, without prior Board approval and without the requirement of a board meeting before said assignment.

(b) The Board member who participates on the Investigative Committee regarding a complaint will recuse himself or herself from any participation in the hearing and determination of the complaint.

(c) The Investigative Committee may ~~contract for the services of an investigator~~ require the licensee to attend a meeting of the Committee to aid in investigating a complaint.

~~(d) The Investigative Committee may require the licensee to respond to the complaint or allegations in writing.~~

~~(e)(d)~~ If the Investigative Committee finds that probable cause exists to suggest that a licensee has violated the laws and/or regulations of the AESBL, the Board's attorney will prepare an administrative complaint to be signed by the Board's executive secretary or his/her designee, the Investigative Committee shall recommend disciplinary action by a majority vote of the committee. The licensee shall be notified by certified mail of the Investigative Committee's recommendation for disciplinary action and the licensee may either agree to said disciplinary action, request a hearing within thirty (30) days, or enter into informal settlement agreement with Board counsel.

~~(f)~~ (e) If the Investigative Committee finds the probable cause does not exist to suggest that the licensee has violated the laws and/or regulations of the AESBL, the complaint file will be closed.

~~(3)~~ **Administrative Complaint Requirements**

~~(a)~~ All administrative complaints will be served on the respondent licensee by certified mail, return receipt requested, or by personal service. If service is returned undeliverable by both of these methods, then service may be made by regular mail to the last known address of the licensee.

~~(b)~~ An administrative complaint will meet the requirements for a notice of hearing, as set forth in 41-22-12 of the Code of Alabama (1975).

~~(c)~~ A licensee must be given at least 30 days notice from the date of service of the complaint before the hearing.

(4) (3) Hearings

(a) ~~An administrative complaint will set forth the date for a hearing of the allegations contained in the administrative complaint~~ Any licensee aggrieved by a decision of the Investigative Committee and who cannot reach an informal settlement with Board counsel regarding disciplinary action may request a hearing within thirty (30) days.

(b) A quorum of the Board members shall sit for the hearing or the Board may request appointment of a Hearing Officer from the Hearing Officers Division of the Attorney General's Office, or a private Hearing Officer.

(c) The Chair of the Board or Hearing Officer will preside at the hearing, and will rule on all pre-hearing motions and evidentiary issues. All pre-hearing motions must be made in writing and filed with the Board. Copies of motions and responses thereto must be served on the opposing party. Service of motions or responses is complete upon placing the same in the mail. Each motion or response thereto will contain a certificate indicating the date on which the motion was served on the opposing party.

(d) No party will be entitled to any pre-hearing discovery without prior approval of the Board or Hearing Officer. Discovery must be requested by Motion, and this Motion must identify the type of information requested and the intended method of discovering it. The opposing party will be given an opportunity to respond to such motion. The Board or Hearing Officer may order discovery for good cause shown, so long as permitting the discovery will not unreasonably delay the hearing of the matter. Any discovery must be clearly related to the allegations contained in the Administrative complaint.

(e) If the Board appoints a Hearing Officer, any party desiring to subpoena the attendance of any person at a hearing or the production of documents via a subpoena duces tecum must apply to the Hearing Officer for such a subpoena. Such application will be made by motion, and a copy of the motion will be served on opposing party in the method previously described for service of motions. The opposing party will be given an opportunity to object to the issuance of the subpoena.

(f) Both the Board and the Respondent will be entitled to present and examine witnesses, to cross-examine witnesses, to introduce evidence, and to be represented by counsel.

(g) The hearing will be conducted in the following order: opening statement by the Board, opening statement by the Respondent, ~~rebuttal opening statement by the Board~~, presentation of the case-in-chief by the Board, presentation of the Respondent's case, presentation of rebuttal evidence by the Board, closing argument by the Board, closing argument by the Respondent, ~~rebuttal closing argument by the Board~~.

The Board or Hearing Officer retains the discretion to take evidence out of order for good cause shown, ~~and the Board or Hearing Officer has the authority to order that closing arguments be submitted in writing.~~ Either the Board or Respondent may waive opening or closing arguments. The hearing will be conducted in accordance with Sections 41-22-12 and 41-22-13 Code of Alabama (1975) and other applicable provisions of the Administrative Procedures Act.

(h) An appointed Hearing Officer will render a written recommended findings of fact and conclusion of law to the Board.

(i) The Board (with the exception of that Board member who served on the Investigative Committee for the complaint and any other board member who is biased or who has a conflict of interest) will review the recommended findings of fact and conclusions of law and determine whether they should be adopted, amended or overruled. If a majority of the members of the Board are unable to vote because of bias, conflict of interest or service on the Investigative Committee, the Hearing Officer's findings of fact and conclusion of law will constitute AESBL's final order.

(j) The Board will issue a final order containing its findings of fact, conclusions of law, and discipline, if any. This final order shall comply with the requirements of Section 41-22-16 of the Code of Alabama (1975). A majority of the Board members rendering the decision must reach accord for the decision to be final.

(k) The Respondent may appeal a final order of the Board to the Circuit Court of Montgomery County.

~~(5)~~(4) Informal Settlement

(a) ~~At any time before or after the issuance of the administrative complaint, the Board may initiate informal settlement negotiations as a means of resolving the allegations being investigated or which form the basis for the administrative complaint.~~ Board counsel is authorized to enter into settlement negotiations on behalf of the Board.

(b) Neither the Board nor the Licensee is obligated to participate in informal settlement negotiations or to enter into an informal settlement agreement.

(c) If the Board and the Respondent do enter into an informal settlement agreement, that settlement agreement will be memorialized in a Consent Order, which must be signed by the respondent or its agent and the Executive Secretary of the Board.

(d) A Consent Order must contain a recitation of the facts giving rise to the allegations, a citation to the code or regulatory sections involved in the allegations, a statement of the terms upon which the parties have agreed to settle the case, and must state that the agreement is not effective unless and until the Board approves the agreement as at its next meeting.

(e) The Consent Order must also state that the parties agree that if the Board does not approve the terms of the settlement agreement, the Board members participating in that decision will not be required to recuse themselves from participation in a formal hearing by virtue of having reviewed the terms of the settlement agreement.

(f) No informal settlement will be final until a majority of the Board approves it at the next meeting of the Board.

(g) The Board member who served on the Investigative Committee may present the proposed settlement to the Board, but may not participate in deliberations regarding whether to accept it and may not participate in the vote on whether to accept it.

(h) If the Board approves the terms of the informal settlement agreement, the Chairman of the Board will sign the Consent Order on behalf of the Board. The Consent Order is effective from the date of signature of the Chairman of the Board, unless the Consent Order expressly provides otherwise.

(i) If the Board does not approve the terms of the settlement agreement, the Chairman of the Board will not sign the Consent Order and the Consent Order will not take effect. The matter will be referred again for formal hearing.

(j) The terms of the informal settlement agreement must serve the public's interest.

~~(6)~~(5) **Grounds for Disciplinary Action**

(a) Lying or giving false information to the Board.

(b) Conviction of a crime that could have been grounds for denial of a license, had the conviction been before licensure.

(c) Violation of the Alabama Electronic Security Board of Licensure Code of Ethics or any other law or regulation of the AESBL.

(d) Failing to maintain insurance coverage as required by Law and Regulations.

(e) Employing one or more unlicensed alarm installers, alarm technicians, locksmiths, salespersons, helpers, or central station operators for more than ten (10) working days without completing and submitting applications and criminal background requests to AESBL.

Author: Fred Crawford

Statutory Authority: Code of Alabama, 1975, § 34-1A

History: **New Rule:** Filed May 28, 2004; effective July 2, 2004;

Amended: Filed November 13, 2007; effective December 18, 2007.

Amended: Filed February 18, 2010; effective March 25, 2010.