

**TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION**

Control _____ Department or Agency: Alabama Private Investigation Board

Rule No.: 741-X-6

Rule Title: **Disciplinary Action**

X New _____ 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

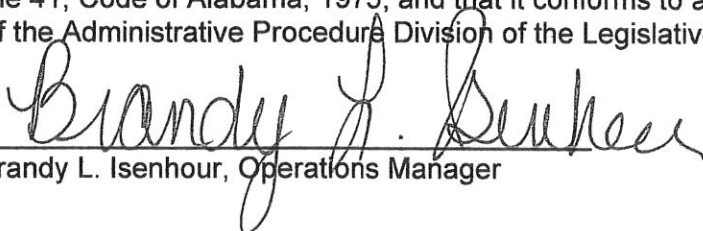
Does the proposed rule have an economic impact? No

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 41-22-23, 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


Brandy L. Isenhour, Operations Manager

Date: November 18, 2013

(DATE FILED)
(STAMP)

Alabama Private Investigation Board

NOTICE OF INTENDED ACTION

AGENCY NAME:

Alabama Private Investigation Board

RULE NO. & TITLE:

741-X-6-.01 **Definitions**
741-X-6-.02 **Grounds for Denial of a License**
741-X-6-.03 **Grounds for Discipline of a License or Denial of Renewal or
Reinstatement**
741-X-6-.04 **Investigation**
741-X-6-.05 **Board Action Following an Investigation**
741-X-6-.06 **Administrative Procedure Act**
741-X-6-.07 **Final Disposition of Contested Cases**
741-X-6-.08 **Informal Disposition of Contested Cases**
741-X-6-.09 **Decisions of the Board**
741-X-6-.10 **Application Following Denial of Licensure**
741-X-6-.11 **Reinstatement of a Revoked License**

INTENDED ACTION:

To establish Rules & Regulations

SUBSTANCE OF PROPOSED ACTION:

The Alabama Private Investigation Board proposes to establish an Administrative Code or Rules and regulations under which to operate. Specifically, these are to establish initial Rules and Regulations.

TIME, PLACE, MANNER OF PRESENTING VIEWS:

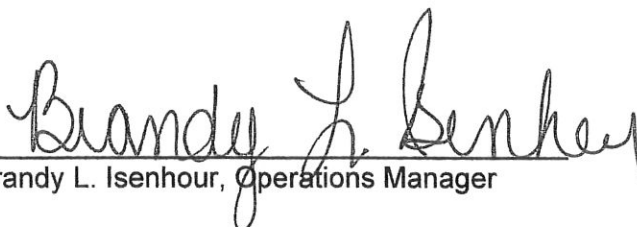
Written comments, views, or arguments will be received by the Alabama Private Investigation Board thru 9:00 am. on December 31, 2013. Comments should be directed to Paula McCaleb, Executive Director, at P.O. Box 241206, Montgomery, AL 36124, or via fax at 334-274-0684.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

December 31, 2013

CONTACT PERSON AT AGENCY:

Paula McCaleb, Executive Director
334.215.0693


Brandy L. Isenhour, Operations Manager

CHAPTER 741-X-6
Disciplinary Action

741-X-6-.01	Definitions
741-X-6-.02	Grounds for Denial of a License
741-X-6-.03	Grounds for Discipline of a License or Denial of Renewal or Reinstatement
741-X-6-.04	Investigation
741-X-6-.05	Board Action Following an Investigation
741-X-6-.06	Administrative Procedure Act
741-X-6-.07	Final Disposition of Contested Cases
741-X-6-.08	Informal Disposition of Contested Cases
741-X-6-.09	Decisions of the Board
741-X-6-.10	Application Following Denial of Licensure
741-X-6-.11	Reinstatement of a Revoked License

741-X-6-.01 Definitions

- (1) Reprimand: A formal censure by the Board.
- (2) Fine: A monetary penalty imposed by the Board.
- (3) Probation: The monitored service of private investigation, which permits the private investigator to continue to provide inspection services pursuant to specified conditions as set forth by the Board.
- (4) Suspension: The temporary withdrawal of the license by Board action.
- (5) Revocation: The withdrawal of the license by Board action.
- (6) Voluntary Surrender: The voluntary relinquishment of a license that has the force and effect of revocation.

741-X-6-.02 Grounds for Application Denial, Suspension, or Revocation.

The Board may suspend, revoke, or refuse to issue or renew any license issued by it upon finding that the holder or applicant has committed any of the following acts:

- (1) A violation of the Alabama Private Investigation Regulatory Act or any rule promulgated by the Board.
- (2) Fraud, deceit, or misrepresentation regarding an application or license.
- (3) Knowingly and willfully making a material misstatement in connection with an application for a license or renewal.
- (4) A conviction by a court of competent jurisdiction of a felony.
- (5) A conviction by a court of competent jurisdiction of a Class A misdemeanor, if the Board finds that the conviction reflects unfavorably on the fitness of the person for the license.
- (6) The commission of any act which would have been cause for refusal to issue the license or registration card had it existed and been known to the Board at the time of issuance.

741-X-6-.03 Grounds for Discipline of a License or Denial of Renewal or Reinstatement.

The Board may reprimand, fine, probate, suspend, revoke or otherwise discipline a private investigator upon proof that the person:

- (1) Is guilty of fraud or deceit in procuring or attempting to procure a license by:
 - (a) Filing false, forged or altered documents or credentials, including required continuing education documentation.
 - (b) Misrepresenting or falsifying facts in applying for original licensure, renewal, reactivation, or reinstatement of license.
 - (c) Having another person appear for a licensing or certification examination.
- (2) Has been convicted of a felony offense.
- (3) Has been convicted of, or has entered a plea of no contest, nolo contendere, nolo contendere, or has entered a plea of guilt, regardless of court disposition (including

adjudication withheld), to a charged criminal act involving moral turpitude or gross immorality that would tend to bring reproach upon the private investigator profession. Such criminal acts include, but are not limited to, offenses involving drugs, theft, lewdness, sexual misconduct, abuse, violence, fraud, or any other conduct deemed detrimental to the public's health, safety or welfare.

741-X-6-.04 Investigation

- (1) Upon self-disclosure or receipt of a written complaint alleging that a private investigator has violated a statute or rule by committing one or more of the actions specified as grounds for disciplinary action, an investigative committee shall be formed consisting of one Board Member, one Board Counsel, one Board Investigator, and the Executive Director.
- (2) The committee shall review the complaint and other information submitted to determine if further investigation is warranted.
 - (a) If an investigation is warranted, the investigator shall work under the direction of the Executive Director to conduct further investigation.
 - (b) At the conclusion of the investigation, the investigator shall submit an investigation report to be reviewed by the investigative committee who has the authority to act on the report as described in Chapter 741-X-6-.05.
 - (c) The investigative committee shall send written notification to the complainant and the private investigator, against whom the complaint was made, of any action it decides to take in response to the investigation report.
- (3) If the committee determines that an investigation is not warranted, the Executive Director may close the investigative file, provided that the matter may be reinvestigated at any time if circumstances so warrant. The Executive Director shall notify the complainant and the private investigator, against whom the complaint was made.

741-X-6-.05 Board Action Following an Investigation

The Board or its authorized designee shall have the power to act on the report of the investigation as follows:

- (1) Dismiss complaint.
- (2) Commence disciplinary proceedings.
- (3) Accept voluntary surrender of a license.

741-X-6-.06 Administrative Procedure Act

The Board hereby adopts by reference as its rules Sections 41-22-1 et seq., Alabama Administrative Procedures Act, Code of Alabama (1975), as amended, governing contested cases, appeals, and related proceedings.

741-X-6-.07 Final Disposition of Contested Cases

- (1) At least thirty days prior to the administrative hearing, a notice of hearing and a copy of the charges shall be served on the applicant or private investigator personally or by registered or certified mail to the last known address shown on records of the Board.
- (2) The Board's complaint may be amended prior to the hearing but no amendment shall be permitted which is not germane to the charge or charges or which materially alters the sufficiency of the complaint.
- (3) A motion for withdrawal of the complaint may be filed with the Board's designee. The circumstances surrounding the attempt to withdraw the complaint may be explained by the person who is attempting to withdraw the complaint and the explanation shall be considered. No complaint that is well founded will be dismissed solely upon the motion of the original complainant.
- (4) Pleadings relating to disciplinary proceedings pending before the Board shall be filed with the Board's designee. Pleadings shall be deemed filed upon actual receipt.
- (5) Requests for subpoenas shall be filed with the Board at least ten days prior to the hearing along with the appropriate subpoena-processing fee. Any expense for service by a sheriff, process server or other entity shall be the responsibility of the party

requesting the subpoena. Any expenses incurred relative to subpoenas requested by a respondent, either for witnesses or related to production of documents are the responsibility of the party who requested the issuance of said subpoena.

- (6) The hearing shall be conducted by the Board or by a hearing officer appointed by the Board. All testimony shall be under oath and shall be transcribed by a court reporter scheduled by the Board. Telephonic or other real-time electronic testimony is admissible at the discretion of the hearing officer.
- (7) A continuance may be granted by the Board or its designee upon the filing of a written motion and affidavit detailing the reasons for the continuance. No motion for continuance shall be granted unless filed at least five days prior to the hearing. This provision may be waived upon showing of an emergency.

741-X-6-.08 Informal Disposition of Contested Cases

- (1) Complaints or controversies may be considered and resolved by the Board or Board designee through alternative dispute resolution, informal conferences, meetings, or other informal means. Such informal measures shall be held without prejudice to the right of the Board thereafter to institute formal proceedings based upon the same or related material if circumstances so warrant.
- (2) Informal dispositions may be made of any contested case by stipulation, agreed settlement, consent order or default or by another method agreed upon by the parties in writing and as approved by the Board.

741-X-6-.09 Decisions of the Board

- (1) Based upon the evidence presented at the administrative hearing or pursuant to informal disposition the Board action may be one or more of the following:
 - (a) Dismiss the complaint.
 - (b) Reprimand the respondent.
 - (c) Probate the respondent's license.
 - (d) Suspend the respondent's license. A suspended license is subject to expiration during the suspension period.
 - (e) Revoke the respondent's license.
 - (f) Deny approval of the application.
 - (g) Deny renewal or reinstatement of a license.
 - (h) Impose other sanctions or restrictions.
- (2) The Board may levy a fine not to exceed \$1,000 per violation. Each day of a violation after notice may be considered as a separate violation.
- (3) The decisions of the Board shall be in writing in the form of an order, a copy of which shall be mailed or delivered to the respondent or the respondent's attorney.
- (4) The decisions of the Board shall be subject to public dissemination.
- (5) Appeals from decisions of the Board are to the Circuit Court in Montgomery County, Montgomery, Alabama and are to be perfected in accordance with the Administrative Procedure Act.

741-X-6-.10 Application Following Denial of Licensure

- (1) Application for a license following denial of licensure shall:
 - (a) Include evidence of rehabilitation, or elimination or resolution of the conditions for denial.
 - (b) Be made according to Chapter 741-X-6.
- (2) Board action on applications following denial of licensure may be resolved either informally or through the formal hearing process.
- (3) In considering a subsequent application for licensure, the Board may evaluate factors that include but are not limited to:
 - (a) The severity of the act(s) or omission(s), which resulted in the denial of license.
 - (b) The conduct of the applicant subsequent to the denial of license.
 - (c) The lapse of time since denial of license.

- (d) Compliance with any conditions stipulated by the Board as prerequisite for a subsequent application.
- (e) Rehabilitation attained by the applicant as evidenced by statements provided directly to the Board from qualified individuals who have professional knowledge of the applicant.
- (f) Whether the applicant is in violation of any applicable statute or rule.

741-X-6-.11 Reinstatement of a Revoked License

- (1) Application for reinstatement:
 - (a) May be made twelve months after the effective date of revocation unless otherwise specified in Order or Agreement.
 - (b) Shall be made according to forms and guidelines provided by the Board.
- (2) Applications for reinstatement of a revoked license may be resolved informally or through the formal hearing process.
- (3) In considering reinstatement of a revoked license, the Board may evaluate factors that include but are not limited to:
 - (a) Severity of the act(s) that resulted in revocation of the license.
 - (b) Conduct of the applicant subsequent to the revocation of license.
 - (c) Lapse of time since revocation.
 - (d) Compliance with all reinstatement requirements stipulated by the Board.
 - (e) Rehabilitation attained by the applicant as evidenced by statements provided directly to the Board from qualified individuals who have professional knowledge of the applicant.
 - (f) Whether the applicant is in violation of any applicable statute or rule.

Author: The Alabama Private Investigation Board

Statutory Authority: Act #2013-306, SB 172 of the 2013 Regular Session

Date: January 7, 2014