

APA-1
11/96

**TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION**

Control _____ Department or Agency: Alabama State Board of Auctioneers
Rule No.: 150-X-1-.08
Rule Title: Disciplinary Actions
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  _____

Date: April 20, 2016

(DATE FILED)
(STAMP)

Alabama State Board of Auctioneers

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama State Board of Auctioneers

RULE NO. & TITLE: 150-X-1-.08 Disciplinary Action

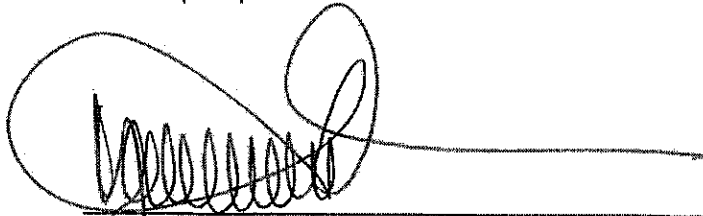
INTENDED ACTION: New

SUBSTANCE OF PROPOSED ACTION: The Board proposes to incorporate the complaint and disciplinary process into its rules and regulations.

TIME, PLACE, MANNER OF PRESENTING VIEWS: Written comments will be received by the Board until 4:00 p.m. on Thursday, June 3, 2016. Comments should be directed to Keith E. Warren, Executive Director at 2777 Zelda Road, Montgomery, AL 36106 or via electronic mail at keith@alstateboard.com or via telephone at 334-215-3474.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:
Thursday, June 3, 2016.

CONTACT PERSON AT AGENCY: Keith E. Warren
Executive Director
2777 Zelda Road
Montgomery, AL 36106
(334) 420-7235

A handwritten signature in black ink, appearing to read 'Keith E. Warren', is written over a horizontal line. The signature is stylized with a large loop at the end.

Keith E. Warren, *Executive Director*
Alabama State Board of Auctioneers

150-X-1-.08 Disciplinary Actions

(a) Proceedings to revoke or suspend a license or to take action against a licensee or non-licensee for violations of the Auctioneer License Act, Section 34-4-1, et seq., Code of Alabama, 1975, or the rules promulgated by the Board may be initiated by any person upon the filing of a complaint with the Board office. Proceedings to deny an application for licensure may be initiated by the Board without a complaint under the direction of the Executive Director.

(b) A complaint initiated by an individual or entity against a licensee or non-licensee shall be in writing and shall contain:

(1) The name and address of the complaining party, as well as the name and address of the individual or entity against which the complaint has been filed.

(2) A plain and concise statement of the facts which indicate that the provisions of the Auctioneer License Act, Section 34-4-1, et seq., Code of Alabama, 1975, or the rules promulgated by the Board have been violated.

(3) The signature of the complainant.

(c) Upon receiving a complaint, the Executive Director shall refer the complaint to one member of the Board, the Board's attorney and the Board Investigator, who together with the Executive Director, shall comprise the Investigative Committee. The Executive Director shall endeavor to assign the complaint to the Board member representing the congressional district in which the licensee or non-licensee resides and/or the alleged violation occurred. The Board's Investigator shall investigate the complaint and issue a written report of his findings to the Investigative Committee, which shall determine appropriate action and/or whether probable cause exists that a violation of the Board's law or its rules has occurred. If charges are filed, the Board member who was a member of the Investigative Committee that made the probable cause determination shall not sit as a member of the Board at the disciplinary hearing held pursuant to the charges. In the event the Investigative Committee determines that probable cause does not exist, no further action will be taken, and the complainant will be notified that the complaint has been closed.

(d) The Board shall instruct its counsel to prepare charges once the Investigative Committee determines that probable cause exists.

(e) The charges shall be sent by certified mail, return receipt requested, to the most recent address of the respondent and shall be mailed at least twenty-one (21) days prior to the scheduled date of the hearing. The Board's Investigator may also effect personal service on the respondent. If the applicant or licensee is an apprentice auctioneer, the Board shall also notify the apprentice's sponsor and/or non-sponsoring employer auctioneer by mailing notice by certified mail to the auctioneer's last known address of record with the Board.

(f) The charges will contain a short and plain statement of the matters asserted and give notice in compliance with the Alabama Administrative Procedure Act, Section 41-22-12(b), and Section 34-11-11, Code of Alabama, 1975. If the Board is unable to state the matters in detail at the time

the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.

(g) The Board may, in its discretion, and subject to the applicable provisions of the Alabama Administrative Procedure Act, appoint a person to act as Hearing Officer at disciplinary hearings. In the event a Hearing Officer is appointed to preside at the hearing, he or she shall rule on all questions of evidence and procedure, notwithstanding any other provisions of these rules to the contrary, and shall submit a written recommendation to the Board, including recommended finding of facts and conclusions of law.

(h) Upon application to the Hearing Officer, or the person appointed to act as Hearing Officer, the Board's attorney or the respondent may seek the deposition upon oral examination of any person or an order for production and copying of documents and things against any person. The discovery must be had in accordance with any terms and conditions imposed by the Hearing Officer, or the person appointed to act as Hearing Officer. The Hearing Officer, or the person appointed to act as Hearing Officer, may impose any such terms and conditions as are just upon discovery in order to protect a person from annoyance, embarrassment, oppression, or undue burden or expense.

(i) The procedure and format of the hearing shall be the same as that utilized in non-jury civil matters in the circuit courts of this state and shall comply with the provisions of the Alabama Administrative Procedure Act. Additionally, the Board is allowed the right to examine any witness called by either party. Evidence shall be admitted in accordance with Section 41-22-13, Code of Alabama, 1975. If the respondent fails or refuses to appear, the Board may proceed to hear and determine the validity of the charges in the respondent's absence upon submission of proof that the respondent has been duly notified of the charges against him or her and of the date, time and place of the hearing, in accordance with Section 41-22-12(d), Code of Alabama, 1975.

(j) The Board will consider the Hearing Officer's recommendations and shall issue an appropriate administrative order approving, modifying or rejecting the Hearing Officer's recommendation within thirty (30) days after the recommendation is submitted to the Board. An affirmative vote of a majority of the Board is required to suspend or revoke a license. In addition to denying, revoking or suspending a license, the Board may levy and collect administrative fines for violations of the Auctioneer License Law or the Board's rules of not less than Two Hundred Dollars (\$200.00) or more than Five Hundred Dollars (\$500.00) for each violation, and may separately impose the cost of the administrative proceeding against the respondent, if found in violation.

(k) The Board's final order shall include findings of fact, official notice taken, and conclusions of law stated separately. A copy of the final order shall be delivered by certified mail, return receipt requested, and first class mail, postage prepaid, to the respondent or, if represented by counsel, to his or her counsel of record.

(l) The Board's attorney, in cooperation with the Investigative Committee, is hereby authorized to negotiate settlements with any respondent wishing to do so. In the event that the Investigative Committee and the respondent have reached tentative agreement on a negotiated settlement of the charges prior to the date set for hearing, such agreement shall be presented to the Board at the first available opportunity. The Board may either accept or reject the tentative agreement of negotiated

settlement, and if accepted, the respondent shall be notified and no hearing held. If the Board rejects the tentative agreement of negotiated settlement, the charges shall be heard by the Board within a reasonable time.

(m) The decision of the Board may be appealed to the Circuit Court of Montgomery County within thirty (30) days after the date of the final order of the Board.

(n) The record on appeal shall be certified by the Executive Director of the Board, and shall include the entire record including a transcript of the hearing, if a transcript is made.

Author: Dana H. Billingsley

Statutory Authority: § 34-4-1, Code of Ala., 1975.

History: New Rule: Filed April 20, 2016.