SPONSOR: Rep. Mitchell & Sen. Ennis
Reps. Briggs King, Carson, Hudson, Keeley, Miro, Paradee, Smyk, Wilson; Sens. Henry, Marshall, Walsh

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 93
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO SECURITY ALARM BUSINESSES AND SECURITY ALARM SYSTEMS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Subchapter I of Chapter 12, Title 24 of the Delaware Code by deleting this Subchapter in its entirety and by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1201. Definitions.

(a) "Compliance Agent" means an individual employed by a licensed security alarm business with no physical presence within this State who serves in a management capacity within this State, and who ensures compliance of the security alarm business with the requirements of this chapter.

(b) "Department" means the Department of Safety and Homeland Security.

(c) "Director" means the officer in charge of the Professional Licensing Section of the Division.

(d) "Division" means the Division of the Delaware State Police.

(e) "Employee" means any person who performs services for wages or salary.

(f) "Licensee" means any person licensed to engage in the business of installing, servicing, selling, repairing, replacing, provision of monitoring or maintaining security alarm systems under this chapter.

(g) "Officer" means the president, vice president, secretary, treasurer, comptroller, partner, or owner.

(h) "Professional Licensing Section" means the Professional Licensing Section within the Division.

(i) "Security alarm business" means a partnership, corporation or other business entity engaged in the sales, installation, service, maintenance, repair, replacement or provision of monitoring services at a customer's home or customer's business. This term does not include a partnership, corporation or other business entity that is engaged in sales of security alarm systems in a retail store location, online or by telephone.

(j) "Security alarm system" means an assembly of equipment and devices arranged to signal the presence of a hazard requiring urgent attention and to which police are expected to respond. This term does not include an alarm installed in a vehicle or on someone's person.

(k) “Superintendent” means the Superintendent of the Division of the Delaware State Police or their designee.

§ 1202. License requirement.

No person may operate a security alarm business without having obtained a license from the Professional Licensing Section pursuant to the requirements of this chapter. An occupational license issued by the Delaware Division of Revenue, pursuant § 2301 of Title 30 does not grant a security alarm business the right to operate within this State without obtaining a license under this chapter.

§ 1203. Duties and powers of Professional Licensing Section.

The Professional Licensing Section shall have all of the following duties and powers:

(1) Adopt and, from time to time, revise such rules, regulations and standards not inconsistent with the law, as may be necessary to enable it to carry into effect this chapter.

(2) Deny or withdraw approval from applicants for failure to meet approved application procedures and other criteria.

(3) Conduct hearings upon request for denial, suspension or revocation of a security alarm business license or security alarm business employee license.

(4) Issue subpoenas and compel the attendance of witnesses, and administer oaths to persons giving testimony at hearings.

(5) Perform inspections by entering at all reasonable times upon any security alarm business or location of a compliance agent, whether public or private property, for the purpose of determining compliance with or violations of this chapter and the promulgated rules and regulations. The Professional Licensing Section shall give any security alarm business 48 hours to comply and schedule such an inspection.

(6) Have all the duties, powers and authority necessary to the enforcement of this chapter, as well as such other duties, powers and authority as it may be granted from time to time by the Superintendent.

§ 1204. Security alarm business requirements.

(a) An applicant for a license to operate as a security alarm business in this State shall furnish all of the following information to the Professional Licensing Section:

(1) If an applicant for licensure is a sole proprietor, the full name, residential address or address of the place of business, and telephone number. If the sole proprietor will not be personally and actively in charge of the business, the sole proprietor shall provide the same information for the person who will manage the business. The sole proprietor shall subscribe to, verify and swear to the application.

(2) If an applicant for licensure is a partnership, the true names, addresses and phone numbers of all the general partners, the name of the partner to be actively in charge of the business or the individual who the partnership appoints to manage the security alarm business. The designated partners or management appointees shall subscribe to, verify and swear to the application.

(3) If an applicant for licensure is a corporation, the true names, addresses and phone numbers of the officers and any other corporate officer or management appointee who will be actively involved in the security alarm business. The designated corporate officer or management appointee shall subscribe to, verify and swear to the application.

(4) If an applicant for licensure is an sole proprietor, partnership or corporation with no physical presence within the State, the applicant shall state the true name, address and telephone number of the compliance agent within this State who will maintain active security alarm business records, including personnel and training records, and supply them upon demand from the Professional Licensing Section within a 48-hour period. The compliance agent shall subscribe to, verify and swear to the application.

(5) A background statement providing the date of inception of the security alarm business or the intended date of inception, the nature of the security alarm business that is the subject of the application, and prior security alarm system work experience both within and outside of this State.

(6) If the applicant for licensure is an individual, the applicant's place of employment for the past 3 years including length of time at each position.

(7) A statement detailing whether an applicant has ever been denied a license or permit, or had a license or permit suspended or revoked, in any jurisdiction to engage in the security alarm business industry.

(8) A list of any felony or misdemeanor convictions in any jurisdiction for all applicants, officers, management appointees, or compliance agents listed on the application.

(9) The Director may require additional information that may reasonably be deemed necessary to determine whether the applicant or individual signing the application meets the requirements of this chapter.

(b) The Professional Licensing Section shall review each applicant, officer, management appointee or compliance agent for evidence of good character and organization illustrating a legitimate purpose. The Professional Licensing Section's review shall include all of the following:

(1) A record of arrests or convictions for crimes involving offenses against the person, dishonesty and fraud in relation to business of security alarm systems.

(2) A record of complaints filed with the Fraud and Consumer Protection Division of the Delaware Department of Justice or Better Business Bureau regarding the applicant, officers, management appointees or compliance agents.

(3) Evidence of a total lack of training or experience in the installation of security alarm systems by any person named in the application;

(4) Failure to obtain a bond as required by §1211 of this chapter.

§ 1205. Security alarm business employee, licensee, compliance agent requirements.

(a) No security alarm business will be issued a license unless all officers, management appointees, or compliance agents who will be actively involved in the security alarm business submit to the State Bureau of Identification their name, social security number, race, sex, date of birth, height, weight, hair and eye color, address of legal residence and the provision of such other information as may be necessary to obtain a report of the person's entire criminal history record by the State Bureau of Identification and a report of the person's entire Federal criminal history pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544.

(b) Whoever wishes to be licensed under this chapter as an employee of a security alarm business must meet and maintain all of the following requirements:

(1) Must not have been convicted of a felony.

(2) Must not have been convicted of any misdemeanor involving theft or a theft-related offense, drug offense, or moral turpitude within the last 7 years and must also not have any of the following:

a. More than 2 of such misdemeanors during such the person's lifetime.

b. A misdemeanor conviction that occurred during or as a result of employment in a capacity regulated by this chapter.

(3) Must not have been adjudicated delinquent for conduct as a juvenile which if committed by an adult would constitute a felony, unless and until that person has reached their twenty-first birthday.

(4) If a veteran of any branch of the armed forces, must not have been dishonorably discharged.

(5) Must meet and maintain the qualifications in the rules and regulations promulgated by the Professional Licensing Section in carrying out the provisions of this chapter.

§ 1206. Renewal of license.

Each license shall expire 2 years after the date of issuance.

§ 1207. Change in ownership or site of business; revocation of license.

(a) A new license is required whenever there is any change in the ownership, type of organization, or control of the licensed security alarm business that results in the creation of a new legal entity.

(b) In the event of any change in the ownership or type of organization or any change in the address of any office or location, the licensee shall notify the Director of such a change in writing within 14 days of the change. A licensee's failure to give such notification is sufficient cause for suspension or revocation of the security alarm business license.

(c) Each license shall be issued to the person named on the application and shall be valid only for the person named on the license. No license shall be assigned or otherwise transferred to another person, with the exception of a sole proprietorship or partnership that incorporates, where the initial licensee remains as a principal in the newly-formed corporation.

(d) Each new officer, management appointee, or compliance agent shall provide the Professional Licensing Section with the information required under § 1204(a) of this chapter.

(e) The Professional Licensing Section shall review each new applicant under subsection (d) of this section as provided under § 1204 of this chapter. If the applicant fails to meet the standards the license shall be revoked.

§ 1208. Posting of license.

(a) Before any applicant shall exercise any rights under the license issued to the applicant, such license, or a certified copy thereof, shall be posted and at all times thereafter, while the same is in force, be displayed in a conspicuous place in the principal office and in each bureau, agency, subagency, office or branch office for which it is issued.

(b) No person holding any license approved by the Professional Licensing Section under this chapter may:

(1) Post or permit such license to be posted upon premises other than those described therein or to which it may be transferred pursuant to this chapter;

(2) Fail to maintain such license in a conspicuous place in such offices or places of business; or

(3) Knowingly alter, deface or destroy any such license or permit the alteration, defacement or destruction thereof.

§ 1209. Identification cards.

(a) The Professional Licensing Section shall issue identification cards to all persons licensed under this chapter.

(b) Any person operating a security alarm business shall provide the Professional Licensing Section with the name, address, Social Security number and 1 set of classifiable fingerprints recorded in the manner required by the Professional Licensing Section for each employee hired, except persons subject to subsection (g) of this section.

(c) No individual shall function as an employee of a security alarm business or perform the duties described in subsection (d) of this section without first obtaining the identification card required by this section.

(d) Officers, compliance agents, employees, and licensees of all security alarm businesses shall obtain an identification card if they are directly engaged in selling, installing, altering, servicing, moving, maintaining, repairing, replacing, monitoring, or responding to or causing others to respond to security alarm systems within this State.

(e) An identification card must be carried by any cardholder at all times such individual is engaged in the security alarm business and must be exhibited upon request.

(f) No identification card issued pursuant to this chapter shall be transferable.

(g) Officers, compliance agents, employees, and licensees who do not perform functions at an end-user's premises are not subject to the requirements of subsections (a) through (f) of this section if their duties are limited to selling Security Alarm Systems at a retail store location, online, or by telephone.

§ 1210. Employee identification cards — Renewal; notice of changes.

(a) Identification cards approved by the Professional Licensing Section shall expire and be renewable on the fifth anniversary of the date of birth of the applicant next following the date of its issuance. If the applicant's birth date is February 29, the identification card shall expire and be renewable on February 28 every fifth year.

(b) The Professional Licensing Section may refuse to renew an identification card for any grounds set forth in § 1213(a) of this chapter.

(c) A security alarm business shall notify the Professional Licensing Section within 10 days after the termination of employment of, or association of, any identification cardholder of such security alarm business.

§ 1211. Issuance of License; Bond.

Upon notification of approval of an application, the newly-licensed security alarm business shall provide the Professional Licensing Section with all of the following at the time of receiving the license and prior to the license being operative:

(1) An occupational license issued by the Division of Revenue as evidence of the ability to conduct business in this State for all offices, bureaus, agencies or branches named in the application.

(2) A cash bond or evidence that the newly-licensed security alarm business is covered by a surety bond conditioned for the faithful and honest conduct of such business by the newly-licensed security alarm business, executed by a surety company authorized to do business in this State, in a reasonable amount to be fixed by the Professional Licensing Section for any person aggrieved by the misconduct of any person licensed under this chapter.

§ 1212. Injunctions.

Upon authority of the Superintendent, any person that has engaged in or is about to engage in any act or practice that constitutes a violation of any provision of this chapter or any promulgated rule or regulation, the Director may request

the Attorney General to make an application to the Court of Chancery for an order enjoining such acts or practices or for an order directing compliance and, upon a showing by the Director that such person has engaged in any such act or practice, a permanent or temporary injunction, restraining order, or other order may be granted.

§ 1213. Disciplinary proceedings; appeal.

(a) Grounds. Subject to the provisions of this chapter, the Superintendent may impose any of the sanctions listed in subsection (b) of this section, singly or in combination, when it finds an applicant, licensee, officer, compliance agent or employee is guilty of any of the following offenses:

(1) Conducting a security alarm business without a license.

(2) Working as an employee or licensee without an identification card.

(3) Lacking good character and legitimate purpose § 1204(b) of this chapter.

(4) Obtaining criminal charges pursuant to § 1205 of this chapter.

(5) Failing to obtain an identification card under § 1209 of this chapter.

(6) Failing to notify subscribers of a security alarm business of a suspension or revocation of its license.

(7) Failing to file a surety bond under § 1211 of this chapter.

(8) Failing to surrender a revoked license or identification card.

(9) Submitting false or fraudulent information on an application for a license or identification card..

(10) Violating any provision of this chapter or any promulgated rule or regulation.

(b) Disciplinary Sanctions.

(1) Permanently revoke a license or identification card.

(2) Suspend a license or identification card.

(3) Issue a letter of reprimand.

(4) Refuse to issue a license or identification card.

(5) Refuse to renew a license or identification card.

(6) Other discipline as considered appropriate and necessary.

(c) Procedure.

(1) After receipt of written notice from the Professional Licensing Section of the Director's denial, suspension, or revocation of a license or identification card, the applicant, licensee, officer, compliance agent or employee shall be afforded a hearing before the Superintendent.

(2) The accused may be represented by counsel who shall have the right of examination and cross examination.

(3) Testimony before the Superintendent shall be under oath.

(4) A record of the hearing shall be made. At the request and expense of any party such record shall be transcribed with a copy to the other party.

(5) The Superintendent's decision shall be based upon sufficient legal evidence. If the charges are supported by such evidence, the Superintendent may sanction such a person as provided by subsection (b) of this section. A suspended license may be reissued upon a further hearing initiated at the request of the suspended licensee, officer, compliance agent or employee by written application to the Director.

(d) All decisions of the Superintendent shall be final and conclusive. Where applicant, licensee, officer, compliance agent or employee is in disagreement with the action of the Superintendent, the practitioner may appeal the Superintendent's decision to the Secretary of the Department within 30 days of service or the postmarked date of the copy of the decision mailed to the individual. The appeal shall be on the record to the Secretary as provided in the Administrative Procedures Act §§ 10142-10145 of Title 29.

§ 1214. Penalties.

Whoever shall violate any part of § 1213 or any provision of this chapter shall be subject to an administrative penalty not to exceed $500 or imprisonment for a period not to exceed 90 days or both.

(1) Assessment of an administrative penalty shall be determined by the nature, circumstances, extent and gravity of the violation, or violations, ability of the violator to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation and such other matters as justice requires.

(2) In the event of nonpayment of the administrative penalty after all legal appeals have been exhausted, a civil action may be brought by the Superintendent in any court of competent jurisdiction, including any Justice of the Peace Court, for collection of the administrative penalty, including interest, attorneys' fees and costs and the validity and appropriateness of such administrative penalty shall not be subject to review.

§ 1215. Notification of arrest.

Any individual licensed under this chapter shall notify the Director within five days, excluding weekends and state holidays, of any arrest which could result in a misdemeanor or felony conviction. Failure to do so may result in the suspension or revocation of a license.

Section 2. Amend § 1222 of Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

(7) "False alarm" means a security alarm system dispatch request to a law-enforcement authority, when no emergency of actual or threatened criminal activity requiring immediate response exists. This definition includes

signals activated by negligence, accident, and mechanical failure~~, and electrical failure~~; signals activated intentionally in nonemergency situations; and signals for which the actual cause is unknown. There is a rebuttable presumption that an alarm is false if personnel responding from a law-enforcement authority do not discover any evidence of unauthorized entry, criminal activity, or other emergency after following normal police procedures in investigating the incident. An alarm is not false if the security alarm system user proves that:

a. An individual activated the alarm based on a reasonable belief that an emergency or actual or threatened criminal activity requiring immediate response existed;

b. The security alarm system was activated by a violent condition of nature, including but not limited to tornadoes, floods, earthquakes and lightning, or by an electrical surge that caused physical damage to the system, as evidenced by testimony of a licensed security alarm system contractor who has conducted an on-site inspection and personally observed the damage to the system;

c. If the security alarm system user experienced a power outage, causing the alarm to activate upon restoration of power, as evidenced by written documentation provided by Delmarva Power or other applicable provider; or,

d. Where there has been a cancellation as defined in paragraph (4) of this section.

(16) "Security alarm business" is as defined in § 1201 of this chapter.

(17) "Security alarm system" is as defined in § 1201 of this chapter.

(18) "Security alarm system administrator" means a person ~~or persons~~ designated by the State with authority to administer, control and review false alarm reduction efforts and administer the provisions of this section.

Section 3. Amend § 1225 of Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 1225. Duties of security alarm businesses.

~~(i) All security businesses shall have an office located in the State of Delaware with an operational telephone that shall be answered during regular business hours.~~

Section 4. Amend § 1226 of Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 1226. Duties and authority of the security alarm system administrator.

~~(a) All security system administrators shall have an office located in the State of Delaware with an operational telephone that shall be answered during regular business hours.~~

Section 5. Amend Subchapter II of Chapter 12, Title 24 of the Delaware Code by striking the term “security business” each time it appears in this Subchapter and substituting the term “security alarm business” in lieu thereof.

Section 6. Amend Subchapter II of Chapter 12, Title 24 of the Delaware Code by striking the term “security system” each time it appears in this Subchapter and substituting the term “security alarm system” in lieu thereof.

Section 7: This Act shall take effect 90 days after its enactment into law. The provisions of this Act apply to any security alarm business seeking to obtain or renew a license after the Act’s effective date. The provisions of this Act do not apply to a security alarm business operating under an existing license prior to the effective date of this Act, however, the provisions will apply to all renewals which occur after the effective date.