

1 SB24
2 110296-2
3 By Senator Marsh
4 RFD: Governmental Affairs
5 First Read: 12-JAN-10
6 PFD: 09/28/2009

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to the regulation and the licensure of
12 private investigators unless licensed by this act; to create
13 the Alabama Private Investigation Board to regulate and
14 license private investigators; to provide for the membership,
15 terms, filling of vacancies, powers, including discipline
16 powers, and duties of the commission; to provide for
17 application and licensure of private investigators; to provide
18 penalties; and in connection therewith would have as its
19 purpose or effect the requirement of a new or increased
20 expenditure of local funds within the meaning of Amendment 621
21 of the Constitution of Alabama of 1901, now appearing as
22 Section 111.05 of the Official Recompilation of the
23 Constitution of Alabama of 1901, as amended.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. This act shall be known and may be cited
26 as the "Alabama Private Investigators Licensing and Regulatory
27 Act."

1 Section 2. As used in this act, the following terms
2 shall have the following meanings:

3 (1) FELONY. A criminal offense that is defined and
4 punishable under the laws of this state, or an offense
5 committed outside the State of Alabama, which if committed in
6 this state, would be subject to punishment by death or
7 imprisonment in an Alabama penitentiary; a crime in any other
8 state or a crime against the United States which is designated
9 as a felony; or an offense in any other state, territory, or
10 country punishable by imprisonment for a term exceeding one
11 year.

12 (2) PRIVATE INVESTIGATION. The investigation by a
13 person or persons for the purpose of obtaining information
14 with reference to any of the following matters:

15 a. A crime committed or threatened against the
16 United States or any state or territory of the United States,
17 when operating under express written authority of the
18 governmental official responsible for authorizing such
19 investigation.

20 b. The identity, habits, conduct, movements,
21 whereabouts, affiliations, associations, transactions,
22 reputation, or character of any society, person, or group of
23 persons.

24 c. The credibility of witnesses or other persons
25 giving testimony in a criminal or civil action.

26 d. The whereabouts of missing persons, owners of
27 unclaimed property or escheated property, or heirs to estates.

1 (3) PRIVATE INVESTIGATING. The act of any individual
2 or company engaging in the business of obtaining or furnishing
3 information with reference to any of the following:

4 a. A crime committed or threatened against the
5 United States or any state or territory of the United States.

6 b. The identity, habits, conduct, business,
7 occupation, honesty, integrity, credibility, knowledge,
8 trustworthiness, efficiency, loyalty, activity, movement,
9 whereabouts, affiliations, associations, transactions, acts,
10 reputations, or character of any person.

11 c. The location, disposition, or recovery of lost or
12 stolen property.

13 d. The cause or responsibility for fires, losses,
14 accidents, damages, or injuries to persons or to property.

15 (4) PRIVATE INVESTIGATOR. a. A person who performs
16 one or more of the private investigation services or private
17 investigating services defined and regulated by this act.

18 b. A person who, for consideration, advertises as
19 providing or performing private investigation. The term does
20 not include an informant who, on a one time or limited basis,
21 as a result of a unique expertise, ability, or vocation, and
22 who provides information or services while under the direction
23 and control of a licensee of the board, that would otherwise
24 be included in the definition of private investigation.

25 (5) PRIVATE INVESTIGATOR or INDIVIDUAL LICENSEE. A
26 person who is engaged in private investigating and licensed in
27 accordance with this act.

1 Section 3. No person shall hold himself or herself
2 out to the public as a private investigator or use any term,
3 title, or abbreviation that expresses, infers, or implies that
4 the person is licensed as a private investigator unless the
5 person at the time holds a valid license to practice private
6 investigating as provided in this act. All applicants shall
7 pass a criminal background check based on criteria established
8 pursuant to Section 4.

9 Section 4. (a) There is created the Alabama Private
10 Investigation Board. The membership of the board shall reflect
11 the racial, gender, geographic, urban and rural, and economic
12 diversity of the state. The board shall consist of the
13 following members, each of whom shall be a resident of this
14 state, appointed as follows:

15 (1) Three persons appointed by the Governor who
16 shall have been principally engaged in the activities of
17 private investigation in this state for at least five years
18 prior to the date of their appointment. Initially, the
19 Governor shall appoint two members for a term of two years and
20 one member for a term of three years. Thereafter, successor
21 members shall be appointed for terms of four years each.

22 (2) One person appointed by the Lieutenant Governor,
23 who shall have been principally engaged in the activities of
24 private investigation in this state for at least five years
25 prior to the date of their appointment. Initially, the
26 Lieutenant Governor shall appoint the member for two years.

1 Thereafter, successor members shall be appointed for terms of
2 four years.

3 (3) One person appointed by the Speaker of the House
4 of Representatives who shall have been principally engaged in
5 the activities of private investigation in this state for at
6 least five years prior to the date of appointment. Initially,
7 the Speaker of the House of Representatives shall appoint the
8 members for two years. Thereafter, successor member shall be
9 appointed for terms of four years.

10 (4) One person appointed by the Attorney General who
11 shall have been principally engaged in the activities of
12 private investigation in this state for at least five years
13 prior to the date of appointment. Initially, the Attorney
14 General shall appoint the member for two years. Thereafter,
15 successor members shall be appointed for terms of four years.

16 (5) One person appointed by the Alabama Private
17 Investigators Association who shall have been principally
18 engaged in the activities of private investigation in this
19 state for at least five years prior to the date of
20 appointment. Initially, the Alabama Private Investigators
21 Association shall appoint the member for two years.
22 Thereafter, successor members shall be appointed for terms of
23 four years.

24 (b) Following the initial appointments, all
25 successor members of the board shall be appointed for a term
26 of four years and shall serve until their successors are
27 appointed and qualified by subscribing to the constitutional

1 oath of office, which shall be filed with the Secretary of
2 State.

3 (c) Any vacancy occurring on the board shall be
4 filled by the appointing authority of the vacating member for
5 the unexpired term.

6 (d) No member shall be appointed to succeed himself
7 or herself for more than one full term.

8 (e) The appointing authority may remove a member of
9 the board for misconduct, incompetency, or willful neglect of
10 duty. The board may recommend to the appointing authority
11 suggested administrative actions that may be taken against a
12 board member for missing an excessive amount of meetings.

13 (f) Each member of the board shall receive a
14 certificate of appointment from the Governor before entering
15 upon the discharge of the duties of office.

16 Section 5. (a) The board is declared to be a
17 quasi-judicial body. Absent negligence, wantonness,
18 recklessness, or deliberate misconduct, the members or the
19 employees of the board are granted immunity from civil
20 liability and may not be liable for damages when acting in the
21 performance of their duties under this act.

22 (b) Board members shall be defended by the Attorney
23 General in regard to any litigation filed against them because
24 of the performance of their duties under this act.

25 Section 6. At the initial meeting of the board and
26 every four years thereafter, the members of the board shall
27 select from among their members a chair and vice chair who

1 shall be private investigators and who shall each have the
2 power to do all things necessary and proper for carrying out
3 the provisions of this act not inconsistent with this act or
4 the laws of this state.

5 Section 7. (a) The board may promulgate rules
6 necessary to implement this act and accomplish its objectives
7 subject to the Alabama Administrative Procedure Act.

8 (b) The board may promulgate and establish canons
9 of ethics and minimum acceptable professional standards of
10 practice for licensees within any rules that it adopts.

11 (c) The board shall be entitled to the services of
12 the Attorney General in connection with the affairs of the
13 board.

14 Section 8. (a) The board shall establish regular and
15 special meetings for the purpose of transacting its business.
16 All members of the board shall be notified of the time and
17 place of each meeting pursuant to the Alabama Open Meeting
18 Act.

19 (b) A majority of the board shall constitute a
20 quorum at any meeting of the board.

21 Section 9. (a) Except as otherwise provided in this
22 act, it shall be unlawful for any person to act as a private
23 investigator, without first obtaining a license from the
24 board. For prosecution purposes a violation of this act is
25 classified as a Class A misdemeanor.

26 (b) All licenses issued to private investigators
27 before the enactment of this act shall continue in effect

1 until their expiration. Each holder of a license may
2 thereafter obtain a renewal of the equivalent license under
3 this act by complying with the terms and conditions for
4 renewal prescribed in this act.

5 (c) Each licensee licensed in accordance with this
6 act shall designate a physical address where his or her
7 records are to be kept.

8 Section 10. An application and all information on an
9 application for licensure as a private investigator shall be
10 treated as confidential and shall be filed with the board on
11 forms prescribed by the board. The application shall include
12 all of the following information of the applicant:

13 (1) His or her full name.

14 (2) His or her date and place of birth.

15 (3) All residences during the immediate past five
16 years.

17 (4) All employment or occupations engaged in during
18 the immediate past five years.

19 (5) Three sets of classifiable fingerprints.

20 (6) A list of convictions and pending charges
21 involving a felony or misdemeanor in any jurisdiction.

22 Section 11. (a) Each individual applicant shall meet
23 the following criteria the he or she:

24 (1) Is at least 19 years of age.

25 (2) Is a citizen of the United States or a legally
26 present resident alien.

1 (3) Has not been declared by any court of competent
2 jurisdiction incompetent by reason of mental defect or disease
3 unless a court of competent jurisdiction has subsequently
4 declared the applicant competent.

5 (4) Has not been convicted of a crime of moral
6 turpitude, with the board having the final determination on
7 the interpretation of moral turpitude.

8 (5) Is of good moral character.

9 (6) Has passed an examination to be administered
10 twice annually by the board designed to measure knowledge and
11 competence in the investigation field.

12 (b) A study guide shall be provided to any applicant
13 seeking to obtain an initial or renewal license under this
14 act.

15 (c) Any investigator currently licensed in the state
16 of Alabama shall not have to meet the initial application
17 requirements of this act, but shall be issued a license upon
18 application.

19 Section 12. (a) Upon receipt of an application for a
20 license pursuant to this act, nonrefundable, nonprorateable,
21 application fees shall be submitted for the following
22 services:

23 (1) A request that the Alabama Bureau of
24 Investigation compare the fingerprints submitted with the
25 application to fingerprints filed with the Alabama Bureau of
26 Investigation. On subsequent applications, the Alabama Bureau
27 of Investigation, at the request of the board, shall review

1 its criminal history files based upon the name, date of birth,
2 sex, race, and Social Security number of an applicant whose
3 fingerprints have previously been submitted to the bureau for
4 any new information since the date of the fingerprint
5 comparison, and shall furnish any information thereby derived
6 to the board.

7 (2) A request to submit the fingerprints to the
8 Federal Bureau of Investigation for a search of its files to
9 determine whether the individuals fingerprinted have any
10 recorded convictions.

11 (b) After the approval of the application by the
12 board, the board shall issue a license in a form prescribed by
13 the board to qualified applicants upon its receipt of a
14 nonrefundable, nonprorateable, private investigator license
15 fee as set by the board.

16 (c) (1) If an application for a license is denied,
17 the board shall notify the applicant in writing and shall set
18 forth the grounds for denial. If the grounds are subject to
19 correction by the applicant, the notice shall so state and
20 specify a reasonable period of time within which the applicant
21 shall make the required correction.

22 (2) The applicant shall be allowed to submit reason
23 for reconsideration to the board within 30 days from the date
24 of receipt of denial.

25 (d) The board shall issue an 8x10 license to all
26 licensees which must be displayed on a wall of the workplace
27 of the licensee. This license shall be deemed property of the

1 State of Alabama and subject to forfeiture to the state upon
2 revocation.

3 Section 13. (a) The board shall issue every private
4 investigator licensee an identification card that shall
5 contain the following information of the licensee:

6 (1) Name.

7 (2) Photograph.

8 (3) Physical characteristics.

9 (4) Private investigators license number.

10 (5) Expiration date of license.

11 (b) An identification card, which shall be issued in
12 a credit card size and shall be permanently laminated.

13 (c) The identification card shall be carried on the
14 person of the licensee when engaged in the activities of the
15 licensee.

16 Section 14. Making a false statement to the board
17 shall be punishable by a civil penalty not to exceed one
18 thousand dollars (\$1,000) and assessment of the maximum
19 application fee.

20 Section 15. Upon receipt of the application and
21 applicable fees, the board shall conduct an investigation to
22 determine whether the statements made in the application are
23 true.

24 Section 16. (a) All licenses issued or renewed under
25 this act shall be valid for a period of two years from the
26 date of issuance. The board shall provide each licensee with a

1 renewal application 60 days prior to the expiration of the
2 license.

3 (b) Each application for renewal shall be reviewed
4 for criminal convictions and civil fraud findings.

5 (c) An administrative monetary penalty prescribed by
6 the board shall be assessed on any renewal application
7 postmarked after the expiration date of the license.

8 (d) No renewal application may be accepted more than
9 30 days after the expiration date of the license or after
10 September 30 of the calendar year.

11 Section 17. (a) The board may suspend, revoke, or
12 refuse to issue or renew any license issued by it upon finding
13 that the holder or applicant has committed any of the
14 following acts:

15 (1) A violation of this act or any rule promulgated
16 under this act.

17 (2) Fraud, deceit, or misrepresentation regarding an
18 application or license.

19 (3) Knowingly and willfully making a material
20 misstatement in connection with an application for a license
21 or renewal.

22 (4) A conviction by a court of competent
23 jurisdiction of a felony or a misdemeanor if the board finds
24 that the conviction reflects unfavorably on the fitness for
25 the license.

26 (5) The commission of any act which would have been
27 cause for refusal to issue the license or registration card

1 had it existed and been known to the board at the time of
2 issuance.

3 (b) In addition to, or in lieu of, any other lawful
4 disciplinary action under this section, the board may assess a
5 civil penalty not exceeding two thousand dollars (\$2,000) for
6 a violation of this act.

7 (c) A license may be suspended for the remaining
8 license period and renewed during any period in which the
9 license was suspended.

10 Section 18. (a) No licensee or applicant shall be
11 required to obtain any authorization, permit, or license from,
12 or pay any other fee or post a bond in, any municipality,
13 county, or other political subdivision of this state to engage
14 in any activity regulated under this act.

15 (b) Notwithstanding subsection (a), a municipality,
16 county, or other political subdivision of this state may
17 impose a bona fide occupational tax on a licensee.

18 Section 19. The board may negotiate and enter into
19 reciprocal agreements with the appropriate officials in other
20 states to permit licensed investigators who meet or exceed the
21 qualifications established in this act to operate across state
22 lines under mutually acceptable terms.

23 Section 20. The board shall provide a copy of this
24 act and any rules promulgated under this act to the following:

25 (1) Each licensee, every two years.

26 (2) Any other person, upon request, for a reasonable
27 fee established by the board.

1 Section 21. The following acts when committed by an
2 individual licensed as a private investigator in Alabama shall
3 constitute a violation punishable as a Class A misdemeanor:

4 (1) To knowingly make a material misrepresentation
5 as to the ability of the individual to perform the
6 investigation required by a potential client in order to
7 obtain employment.

8 (2) To make unsubstantiated monetary charges to a
9 client for services not rendered or transportation not
10 utilized.

11 (3) To knowingly make a false report to a client in
12 relation to the investigation performed for a client.

13 (4) To continue an investigation for a client when
14 it becomes obvious to the investigator that a successful
15 completion of an investigation is unlikely without first
16 advising the client and obtaining the approval of the client
17 for continuation of the investigation.

18 (5) To reveal information obtained for a client
19 during an investigation to another individual except as
20 required by law.

21 (6) Persons licensed pursuant to this act are
22 required to report any suspected instances of child abuse or
23 neglect and must report their suspicions to local law
24 enforcement or the Department of Human Resources, or both.

25 Section 22. The Administrative Procedure Act shall
26 govern all matters and procedures respecting the hearing and
27 judicial overview of any contested case.

1 Section 23. This act does not apply to the
2 following:

3 (1) An employee of any business or entity that is
4 not primarily engaged in the business of private
5 investigations or private investigating when that employee is
6 performing duties related to his or her employment.

7 (2) An investigation of the internal affairs of a
8 private business entity investigating a current or prospective
9 employee.

10 (3) An employee of any business or entity that is
11 not primarily engaged in the business of private
12 investigations or private investigating when that employee is
13 working under a contract for his or her services that his or
14 her employer signed with a third party.

15 (4) Any person or professional (including without
16 limitation attorneys providing legal services) who is not
17 primarily engaged in the business of private investigations or
18 private investigating, but who in conjunction with his or her
19 business or profession may occasionally perform private
20 investigations or private investigating.

21 (5) Any business or entity that is not primarily
22 engaged in the business of private investigations or private
23 investigating.

24 (6) A consumer reporting agency as defined by the
25 Federal Fair Credit Reporting Act.

1 Section 24. (a) There is created within the board a
2 division of investigation that shall be its official
3 investigative agency.

4 (b) Each licensee shall provide to the investigative
5 staff all records that pertain to the exact nature of the
6 complaint under investigation and upon issuance of a subpoena.

7 (c) The board or any executive director of the board
8 may subpoena those persons or documents necessary to any
9 investigation undertaken under this act if other means
10 including, but not limited to, notification by return receipt
11 registered United States mail, have not produced the desired
12 results.

13 Section 25. (a) Each licensee shall complete eight
14 hours of continuing professional education acceptable to the
15 board in each calendar year.

16 (b) The board shall make every effort to ensue at
17 least one seminar per year will be held in each congressional
18 district of the state providing an opportunity to fulfill the
19 continuing professional education requirements of this
20 section, which shall include at least one hour per year on
21 ethics.

22 (c) The board shall promulgate rules necessary to
23 carry out this section.

24 Section 26. (a) Any person offering private
25 investigator training must first be certified by the board.
26 The board shall ensure that the instructors employed by the
27 training provider possess both the experience and academic

1 credentials to ensure that the curriculum and instruction will
2 be beneficial to those seeking to enter the profession. In
3 order to qualify as a certified trainer or instructor, or
4 both, the trainer shall meet the following criteria:

5 (1) He or she is 19 years of age.

6 (2) He or she has had at least three years'
7 experience satisfactory to the board with an investigative
8 company or proprietary entity or with any federal, United
9 States Military, state, county, or municipal law enforcement
10 agency and relating to the block of instruction.

11 (3) He or she is personally qualified to conduct the
12 training required by this act and is certified by the board
13 which shall establish standards for the instruction process.

14 (b) A certified trainer, in his or her discretion,
15 may instruct personally or use a combination of personal,
16 instruction, audio, and visual training aids.

17 (c) To assist in the implementation of a training
18 program, the certified trainer may use as an assistant trainer
19 one who meets the following requirements:

20 (1) He or she is 19 years of age.

21 (2) He or she has had at least one year of
22 experience with an investigative company or any United States
23 Military, state, county, or municipal law enforcement agency.

24 (d) A certified trainer may be an employee of a
25 private investigative or propriety agency or, if not, employed
26 by an agency as a company under this act.

1 (e) The certified trainer shall certify that he or
2 she has successfully completed the training and shall submit
3 the certification to the board.

4 (f) The training program, fees, and requirements
5 shall be established by rules promulgated by the board.

6 Section 27. No action taken under this act shall
7 preclude prosecution under any other law of this state.

8 Section 28. Although this bill would have as its
9 purpose or effect the requirement of a new or increased
10 expenditure of local funds, the bill is excluded from further
11 requirements and application under Amendment 621, now
12 appearing as Section 111.05 of the Official Recompilation of
13 the Constitution of Alabama of 1901, as amended, because the
14 bill defines a new crime or amends the definition of an
15 existing crime.

16 Section 29. This act shall become effective on the
17 first day of the third month following its passage and
18 approval by the Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate committee on Governmental Affairs	12-JAN-10
Read for the second time and placed on the calen- dar 3 amendments	19-JAN-10
Read for the third time and passed as amended ...	11-FEB-10

Yeas 33
Nays 0

McDowell Lee
Secretary