

1 HB323
2 127397-1
3 By Representative McClendon
4 RFD: Boards, Agencies and Commissions
5 First Read: 24-MAR-11

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8 SYNOPSIS: Currently, the practice of private
9 investigation is not regulated or licensed by the
10 state.

11 This bill would regulate and license the
12 practice of private investigation by private
13 investigators.

14 This bill would define terms; create the
15 Alabama Private Investigation Board and provide for
16 its membership, meetings, officers, powers, and
17 duties; and would prohibit persons acting as a
18 private investigator without a license, subject to
19 criminal punishment as a Class A misdemeanor.

20 Amendment 621 of the Constitution of Alabama
21 of 1901, now appearing as Section 111.05 of the
22 Official Recompilation of the Constitution of
23 Alabama of 1901, as amended, prohibits a general
24 law whose purpose or effect would be to require a
25 new or increased expenditure of local funds from
26 becoming effective with regard to a local
27 governmental entity without enactment by a 2/3 vote

1 unless: it comes within one of a number of
2 specified exceptions; it is approved by the
3 affected entity; or the Legislature appropriates
4 funds, or provides a local source of revenue, to
5 the entity for the purpose.

6 The purpose or effect of this bill would be
7 to require a new or increased expenditure of local
8 funds within the meaning of the amendment. However,
9 the bill does not require approval of a local
10 governmental entity or enactment by a 2/3 vote to
11 become effective because it comes within one of the
12 specified exceptions contained in the amendment.

13
14 A BILL

15 TO BE ENTITLED

16 AN ACT

17
18 Relating to the regulation and the licensure of
19 private investigators unless licensed by this act; to create
20 the Alabama Private Investigation Board to regulate and
21 license private investigators; to provide for the membership,
22 terms, filling of vacancies, powers, including discipline
23 powers, and duties of the commission; to provide for
24 application and licensure of private investigators; to provide
25 penalties; and in connection therewith would have as its
26 purpose or effect the requirement of a new or increased
27 expenditure of local funds within the meaning of Amendment 621

1 of the Constitution of Alabama of 1901, now appearing as
2 Section 111.05 of the Official Recompilation of the
3 Constitution of Alabama of 1901, as amended.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. This act shall be known and may be cited
6 as the "Alabama Private Investigators Licensing and Regulatory
7 Act."

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

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

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

22 a. A crime committed or threatened against the
23 United States or any state or territory of the United States,
24 when operating under express written authority of the
25 governmental official responsible for authorizing such
26 investigation.

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

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

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

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

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

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

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

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

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

b. A person who, for consideration, advertises as providing or performing private investigation. The term does

1 not include an informant who, on a one time or limited basis,
2 as a result of a unique expertise, ability, or vocation, and
3 who provides information or services while under the direction
4 and control of a licensee of the board, that would otherwise
5 be included in the definition of private investigation.

6 (5) PRIVATE INVESTIGATOR or INDIVIDUAL LICENSEE. A
7 person who is engaged in private investigating and licensed in
8 accordance with this act.

9 Section 3. No person shall hold himself or herself
10 out to the public as a private investigator or use any term,
11 title, or abbreviation that expresses, infers, or implies that
12 the person is licensed as a private investigator unless the
13 person at the time holds a valid license to practice private
14 investigating as provided in this act. All applicants shall
15 pass a criminal background check based on criteria established
16 pursuant to Section 4.

17 Section 4. (a) There is created the Alabama Private
18 Investigation Board. The membership of the board shall reflect
19 the racial, gender, geographic, urban and rural, and economic
20 diversity of the state. The board shall consist of the
21 following members, each of whom shall be a resident of this
22 state, appointed as follows:

23 (1) Three persons appointed by the Governor who
24 shall have been principally engaged in the activities of
25 private investigation in this state for at least five years
26 prior to the date of their appointment. Initially, the
27 Governor shall appoint two members for a term of two years and

1 one member for a term of three years. Thereafter, successor
2 members shall be appointed for terms of four years each.

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

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

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

23 (5) One person appointed by the Alabama Private
24 Investigators Association who shall have been principally
25 engaged in the activities of private investigation in this
26 state for at least five years prior to the date of
27 appointment. Initially, the Alabama Private Investigators

Association shall appoint the member for two years.

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

(b) Following the initial appointments, all successor members of the board shall be appointed for a term of four years and shall serve until their successors are appointed and qualified by subscribing to the constitutional oath of office, which shall be filed with the Secretary of State.

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

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

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

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

Section 5. (a) The board is declared to be a quasi-judicial body. Absent negligence, wantonness, recklessness, or deliberate misconduct, the members or the employees of the board are granted immunity from civil

1 liability and may not be liable for damages when acting in the
2 performance of their duties under this act.

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

6 Section 6. At the initial meeting of the board and
7 every four years thereafter, the members of the board shall
8 select from among their members a chair and vice chair who
9 shall be private investigators and who shall each have the
10 power to do all things necessary and proper for carrying out
11 the provisions of this act not inconsistent with this act or
12 the laws of this state.

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

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

19 (c) The board shall be entitled to the services of
20 the Attorney General in connection with the affairs of the
21 board.

22 Section 8. (a) The board shall establish regular and
23 special meetings for the purpose of transacting its business.
24 All members of the board shall be notified of the time and
25 place of each meeting pursuant to the Alabama Open Meeting
26 Act.

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

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

(b) All licenses issued to private investigators before the enactment of this act shall continue in effect until their expiration. Each holder of a license may thereafter obtain a renewal of the equivalent license under this act by complying with the terms and conditions for renewal prescribed in this act.

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

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

(1) His or her full name.

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

(3) All residences during the immediate past five

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

(5) Three sets of classifiable fingerprints.

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

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

(1) Is at least 19 years of age.

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

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

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

(5) Is of good moral character.

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

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

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

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

(1) A request that the Alabama Bureau of Investigation compare the fingerprints submitted with the application to fingerprints filed with the Alabama Bureau of Investigation. On subsequent applications, the Alabama Bureau of Investigation, at the request of the board, shall review its criminal history files based upon the name, date of birth, sex, race, and Social Security number of an applicant whose fingerprints have previously been submitted to the bureau for any new information since the date of the fingerprint comparison, and shall furnish any information thereby derived to the board.

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

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

(c) (1) If an application for a license is denied, the board shall notify the applicant in writing and shall set forth the grounds for denial. If the grounds are subject to

1 correction by the applicant, the notice shall so state and
2 specify a reasonable period of time within which the applicant
3 shall make the required correction.

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

7 (d) The board shall issue an 8x10 license to all
8 licensees which must be displayed on a wall of the workplace
9 of the licensee. This license shall be deemed property of the
10 State of Alabama and subject to forfeiture to the state upon
11 revocation.

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

15 (1) Name.

16 (2) Photograph.

17 (3) Physical characteristics.

18 (4) Private investigators license number.

19 (5) Expiration date of license.

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

22 (c) The identification card shall be carried on the
23 person of the licensee when engaged in the activities of the
24 licensee.

25 Section 14. Making a false statement to the board
26 shall be punishable by a civil penalty not to exceed one

thousand dollars (\$1,000) and assessment of the maximum application fee.

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

Section 16. (a) All licenses issued or renewed under this act shall be valid for a period of two years from the date of issuance. The board shall provide each licensee with a renewal application 60 days prior to the expiration of the license.

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

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

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

Section 17. (a) 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 this act or any rule promulgated under this act.

(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 or a misdemeanor if the board finds that the conviction reflects unfavorably on the fitness for the license.

(5) 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.

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

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

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

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

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

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

- (1) Each licensee, every two years.
- (2) Any other person, upon request, for a reasonable
period of time, to be determined by the board.

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

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

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

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

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

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

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

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

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

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

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

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

(4) Any person or professional (including without limitation attorneys providing legal services) who is not primarily engaged in the business of private investigations or

1 private investigating, but who in conjunction with his or her
2 business or profession may occasionally perform private
3 investigations or private investigating.

4 (5) Any business or entity that is not primarily
5 engaged in the business of private investigations or private
6 investigating.

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

9 Section 24. (a) There is created within the board a
10 division of investigation that shall be its official
11 investigative agency.

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

15 (c) The board or any executive director of the board
16 may subpoena those persons or documents necessary to any
17 investigation undertaken under this act if other means
18 including, but not limited to, notification by return receipt
19 registered United States mail, have not produced the desired
20 results.

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

24 (b) The board shall make every effort to ensure at
25 least one seminar per year will be held in each congressional
26 district of the state providing an opportunity to fulfill the
27 continuing professional education requirements of this

1 section, which shall include at least one hour per year on
2 ethics.

3 (c) The board shall promulgate rules necessary to
4 carry out this section.

5 Section 26. (a) Any person offering private
6 investigator training must first be certified by the board.
7 The board shall ensure that the instructors employed by the
8 training provider possess both the experience and academic
9 credentials to ensure that the curriculum and instruction will
10 be beneficial to those seeking to enter the profession. In
11 order to qualify as a certified trainer or instructor, or
12 both, the trainer shall meet the following criteria:

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

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

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

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

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

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

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

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

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

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

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

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

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