

1 **PRIVATE INVESTIGATOR REGULATION**

2 1998 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Susan J. Koehn**

5 AN ACT RELATING TO PUBLIC SAFETY; AMENDING PROVISIONS FOR LICENSURE
6 AND REGULATION OF PRIVATE INVESTIGATORS; PROVIDING CRIMINAL
7 PENALTIES; REPEALING CERTAIN PROVISIONS; AND MAKING TECHNICAL
8 CHANGES.

9 This act affects sections of Utah Code Annotated 1953 as follows:

10 AMENDS:

11 **53-9-102**, as enacted by Chapter 314, Laws of Utah 1995

12 **53-9-103**, as enacted by Chapter 314, Laws of Utah 1995

13 **53-9-104**, as last amended by Chapter 243, Laws of Utah 1996

14 **53-9-105**, as enacted by Chapter 314, Laws of Utah 1995

15 **53-9-107**, as enacted by Chapter 314, Laws of Utah 1995

16 **53-9-108**, as enacted by Chapter 314, Laws of Utah 1995

17 **53-9-109**, as enacted by Chapter 314, Laws of Utah 1995

18 **53-9-110**, as last amended by Chapter 10, Laws of Utah 1997

19 **53-9-111**, as enacted by Chapter 314, Laws of Utah 1995

20 **53-9-112**, as enacted by Chapter 314, Laws of Utah 1995

21 **53-9-113**, as enacted by Chapter 314, Laws of Utah 1995

22 **53-9-115**, as enacted by Chapter 314, Laws of Utah 1995

23 **53-9-116**, as enacted by Chapter 314, Laws of Utah 1995

24 **53-9-117**, as enacted by Chapter 314, Laws of Utah 1995

25 **53-9-118**, as enacted by Chapter 314, Laws of Utah 1995

26 **53-9-119**, as enacted by Chapter 314, Laws of Utah 1995

27 REPEALS:

1 **53-9-114**, as enacted by Chapter 314, Laws of Utah 1995

2 **53-9-120**, as enacted by Chapter 314, Laws of Utah 1995

3 *Be it enacted by the Legislature of the state of Utah:*

4 Section 1. Section **53-9-102** is amended to read:

5 **53-9-102. Definitions.**

6 In this chapter, unless otherwise stated:

7 (1) "Adequate records" means records containing, at a minimum, sufficient information
8 to identify the client, the dates of service, the fee for service, the payments for service, the type of
9 service given, and copies of any reports that may have been made.

10 (2) "Advertising" means the submission of bids, contracting or making known by any
11 public notice, publication, or solicitation of business, directly or indirectly, that services regulated
12 under this chapter are available for consideration.

13 (3) "Agency" means a person who [~~is licensed~~] holds an agency license pursuant to this
14 chapter, and includes one who employs an individual for wages and salary, and withholds all
15 legally required deductions and contributions, or contracts with a [~~registered private investigator~~]
16 registrant or an apprentice on a part-time or case-by-case basis to conduct an investigation on
17 behalf of the [~~employer~~] agency.

18 (4) "Applicant" means any person who has submitted a completed application and all
19 required fees.

20 (5) "Apprentice" means [~~any individual who holds an apprentice registration card~~] a person
21 who holds an apprentice license pursuant to this chapter, has not met the requirements for
22 registration, and works under the direct supervision and guidance of [~~a licensed private investigator~~
23 ~~or registrant~~] an agency.

24 (6) "Board" means the Private Investigator Hearing and Licensure Board created in Section
25 53-9-104.

26 (7) "Commissioner" means the commissioner of the Department of Public Safety.

27 (8) "Conviction" means an adjudication of guilt by a federal, state, or local court resulting
28 from trial or plea, including a plea of no contest, regardless of whether the imposition of sentence
29 was suspended.

30 (9) "Department" means the Department of Public Safety.

31 (10) "Direct supervision" means that the agency or employer:

1 (a) is responsible for, and authorizes, the type and extent of work assigned;

2 (b) reviews and approves all work produced by the apprentice before it goes to the client;

3 and

4 (c) closely supervises and provides direction and guidance to the apprentice in the
5 performance of his assigned work.

6 [(10)] (11) "Emergency action" means a summary suspension of a license pending
7 revocation, suspension, or probation in order to protect the public health, safety, or welfare.

8 [(11)] (12) "Employee" means an individual who works for an agency or other employer,
9 is listed on the agency's or employer's payroll records, and is under the agency's or employer's
10 direction and control. An employee is not an independent contractor.

11 [(12)] (13) "Identification card" means a card issued by the commissioner to a qualified
12 applicant for [~~a private investigator~~] an agency, registrant, or apprentice license[~~, and partners or~~
13 corporate associates working under the license, or a registration card issued to an employee,
14 apprentice, or registrant].

15 [(13)] (14) "Letter of concern" means an advisory letter to notify a [~~private investigator~~]
16 licensee that while there is insufficient evidence to support probation, suspension, or revocation
17 of a license, the department [~~believes~~] informs the [~~private investigator should~~] licensee of the
18 need to modify or eliminate certain practices and that continuation of the activities that led to the
19 information being submitted to the department may result in further disciplinary action against the
20 [~~private investigator's license or registration~~] licensee.

21 [(14)] (15) "Licensee" means a person to whom [~~a private investigator~~] an agency,
22 registrant, or apprentice license is issued [~~and who is authorized to be an agency~~] by the
23 department.

24 [(15)] (16) (a) "Private investigator or private detective" means any person [~~licensed under~~
25 ~~this section~~], except collection agencies and credit reporting agencies, who, for consideration,
26 engages in business or accepts employment to conduct any investigation for the purpose of
27 obtaining information with reference to:

28 (i) crime, [~~wrongs done~~] wrongful acts, or threats against the United States or any state or
29 territory of the United States;

30 (ii) the identity, reputation, character, habits, conduct, business occupation, honesty,
31 integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movements,

1 whereabouts, affiliations, associations, or transactions~~[, reputation, or character]~~ of any person or
2 group of persons;

3 (iii) the credibility of witnesses or other persons;

4 (iv) the whereabouts of missing persons or owners of abandoned property;

5 (v) the causes and origin of, or responsibility for a fire, libel, slander, a loss, an accident,
6 damage, or an injury to real or personal property;

7 (vi) the business of securing evidence to be used before investigating committees or boards
8 of award or arbitration or in the trial of civil or criminal cases and the trial preparation;

9 (vii) the prevention, detection, and removal of installed devices for eavesdropping or
10 observation;

11 (viii) the business of "skip tracing" persons who have become delinquent in their lawful
12 debts, either when hired by an individual, collection agency, or through the direct purchase of the
13 debt from a financial institution or entity owning the debt or judgment; or

14 (ix) serving civil process.

15 (b) "Private investigator or private detective" does not include:

16 (i) any person or employee conducting an investigation on ~~[their]~~ the person's or
17 employee's own behalf or on behalf of ~~[their]~~ the employer if the employer is not a private
18 investigator under this chapter; or

19 (ii) an employee of an attorney licensed to practice law in this state.

20 ~~[(16)]~~ (17) "Qualifying party" means the individual meeting the qualifications under this
21 chapter for a private investigator license.

22 ~~[(17)]~~ (18) "Registrant" means any ~~[individual who has met the requirements for~~
23 registration in the private investigator profession] person who holds a registrant license pursuant
24 to this chapter. The registrant performs private investigative work either as an employee on an
25 employer's payroll or, on a contract with an agency, part-time, or case-by-case basis, with a
26 minimum amount of direction.

27 ~~[(18)]~~ (19) "Restructuring" means any change in ~~[a business']~~ the legal status of a business.

28 ~~[(19)]~~ (20) "Unprofessional conduct" means any of the following:

29 (a) engaging or offering to engage by fraud or misrepresentation in any activities regulated
30 by this chapter;

31 (b) aiding or abetting a person who is not licensed pursuant to this chapter in representing

1 that person as a private investigator or registrant in this state;

2 (c) gross negligence in the practice of a private investigator or registrant;

3 (d) failing or refusing to maintain adequate records and investigative findings on a subject
4 of investigation or a client;

5 (e) committing a felony or a misdemeanor involving any crime that is grounds for denial,
6 suspension, or revocation of [~~a private investigator license or registrant card~~] an agency, registrant,
7 or apprentice license. In all cases, conviction by a court of competent jurisdiction or a plea of no
8 contest is conclusive evidence of the commission of the crime; or

9 (f) making a fraudulent or untrue statement to the board, department, or its investigators,
10 staff, or consultants.

11 Section 2. Section **53-9-103** is amended to read:

12 **53-9-103. Commissioner of Public Safety to administer -- Duties -- Records -- Bonds**
13 **-- Rulemaking.**

14 (1) The commissioner of the Department of Public Safety shall administer this chapter.

15 (2) The commissioner shall keep records of:

16 (a) all applications for licenses under this chapter; and

17 (b) all bonds and proof of workers' compensation required to be filed.

18 (3) [~~Records~~] The records shall include statements as to whether a license or renewal
19 license has been issued for each application and bond.

20 (4) If a license is revoked, suspended, canceled, or denied or if a licensee is placed on
21 probation, the date of filing the order for revocation, suspension, cancellation, denial, or probation
22 shall be included.

23 (5) The commissioner shall maintain a list of all [~~individuals, firms, partnerships,~~
24 ~~associations, or corporations~~] licensees that have had a license revoked, suspended, placed on
25 probation, or canceled and a written record of complaints filed against licensees [~~and registrants~~].

26 (6) The commissioner may make rules in accordance with Title 63, Chapter 46a, Utah
27 Administrative Rulemaking Act, necessary to administer this chapter.

28 Section 3. Section **53-9-104** is amended to read:

29 **53-9-104. Board -- Creation-- Qualifications -- Appointments -- Terms -- Immunity.**

30 (1) There is established a Private Investigator Hearing and Licensure Board consisting of
31 five members appointed by the commissioner.

1 (2) Each member of the board shall be a citizen of the United States and a resident of this
2 state at the time of appointment.

3 (a) Two members shall be qualifying parties who are licensed as provided in this chapter.

4 (b) One member shall be a supervisory investigator from the commissioner's office.

5 (c) One member shall be a chief of police or sheriff.

6 (d) One member shall be a public member who shall not have a financial interest in a
7 private investigative agency and shall not have an immediate family member or a household
8 member or friend who is licensed or registered under this chapter.

9 ~~[(3) (a) Except as required by Subsection (b), as terms of current board members expire,~~
10 ~~the commissioner shall appoint each new member or reappointed member to a four-year term.]~~

11 ~~[(b) Notwithstanding the requirements of Subsection (a), the commissioner shall, at the~~
12 ~~time of appointment or reappointment, adjust the length of terms to ensure that the terms of board~~
13 ~~members are staggered so that approximately half of the board is appointed every two years.]~~

14 (3) (a) Each member of the board shall serve four-year staggered terms beginning and
15 ending on January 1.

16 (b) Notwithstanding the term requirements of Subsection (3)(a), the commissioner may
17 adjust the length of terms to ensure the terms of board members are staggered so that
18 approximately one member of the board is appointed every year.

19 (4) When a vacancy occurs in the membership for any reason, the replacement shall be
20 appointed for the unexpired term.

21 (5) At its first meeting every year, the board shall elect a chair, vice chair, and secretary
22 from its membership.

23 (6) (a) (i) Members who are not government employees shall receive no compensation or
24 benefits for their services, but may receive per diem and expenses incurred in the performance of
25 the member's official duties at the rates established by the Division of Finance under Sections
26 63A-3-106 and 63A-3-107.

27 (ii) Members may decline to receive per diem and expenses for their service.

28 (b) (i) State government officer and employee members who do not receive salary, per
29 diem, or expenses from their agency for their service may receive per diem and expenses incurred
30 in the performance of their official duties from the board at the rates established by the Division
31 of Finance under Sections 63A-3-106 and 63A-3-107.

1 (ii) State government officer and employee members may decline to receive per diem and
2 expenses for their service.

3 (7) A member shall not serve more than one term, except that a member appointed to fill
4 a vacancy or appointed for an initial term of less than four years [~~under Subsection (3)~~] may be
5 reappointed for one full term.

6 (8) The commissioner, after a board hearing and recommendation, may remove any
7 member of the board for misconduct, incompetency, or neglect of duty.

8 (9) Members of the board are immune from suit with respect to all acts done and actions
9 taken in good faith in furtherance of the purposes of this chapter.

10 Section 4. Section **53-9-105** is amended to read:

11 **53-9-105. Powers and duties of the board.**

12 (1) The board shall:

13 (a) review all applications for [~~licensing, registration,~~] licenses and renewals of licenses
14 for private investigators [~~and agencies~~] and make recommendations to the commissioner for
15 approval or disapproval; and

16 (b) review all complaints and make recommendations to the commissioner regarding
17 disciplinary action.

18 (2) The board may take and hear evidence, administer oaths and affirmations, and compel
19 by subpoena the attendance of witnesses and the production of books, papers, records, documents,
20 and other information relating to a formal complaint against or department investigation of a
21 private investigator.

22 Section 5. Section **53-9-107** is amended to read:

23 **53-9-107. Classification of licenses -- License required to act.**

24 (1) Every person applying for a license under this chapter shall indicate on the application
25 which of the following licenses [~~he~~] the applicant is applying for:

26 (a) an agency license shall be issued to [~~applicants~~] an applicant who [~~meet~~] meets the
27 requirements of [~~Section~~] Subsection 53-9-108(1) and Section 53-9-109;

28 (b) a [~~person~~] registrant license shall be issued [~~a registration if he meets~~] to an applicant
29 who meets the requirements of [~~Subsection 53-9-110(1)~~] Subsection 53-9-108(2) and Section
30 53-9-110; or

31 (c) [~~a person meeting the requirements of Subsection 53-9-110(2)~~] an apprentice license

1 shall be issued ~~[an apprentice registration card]~~ to an applicant who meets the requirements of
 2 Subsection 53-9-108(3) and Section 53-9-110.

3 (2) ~~[A]~~ Unless licensed under this chapter, a person may not:

4 (a) act or assume to act as, or represent himself to be;

5 (i) a licensee ~~[or registrant unless he is licensed or registered under this chapter, and a~~
 6 ~~person may not]~~; or

7 (ii) a private investigator or private detective as defined in Subsection 53-9-102(16) or
 8 conduct any investigation as provided in Subsection 53-9-102(16); or

9 (b) falsely represent ~~[that he is]~~ to be employed by ~~[a licensee]~~ or for an independent
 10 contractor for an agency.

11 Section 6. Section **53-9-108** is amended to read:

12 **53-9-108. Qualifications for licensure.**

13 (1) (a) An applicant for an agency license ~~[or registration]~~ under this chapter shall be at
 14 least 21 years of age, a citizen or legal resident of the United States, and of good moral character;
 15 and.

16 (b) An applicant may not have been:

17 (i) [have been] convicted of a felony;

18 (ii) [have been] convicted of any act involving illegally using, carrying, or possessing a
 19 dangerous weapon;

20 (iii) [have been] convicted of any act of personal violence or force on any person or
 21 convicted of threatening to commit any act of personal violence or force against another person;

22 (iv) [have been] convicted of any act constituting dishonesty or fraud;

23 (v) [have been] convicted of any act involving moral turpitude;

24 (vi) [be] placed on probation; or parole;

25 (vii) named in an outstanding arrest warrant; or

26 (viii) convicted of illegally obtaining or disclosing private, controlled, or protected records
 27 as provided in Section 63-2-801.

28 ~~[(b)]~~ (c) If previously or currently licensed in another state or jurisdiction, the applicant
 29 shall be in good standing within that state or jurisdiction.

30 ~~[(c)]~~ (d) ~~[All applicants]~~ An applicant shall have ~~[had]~~ completed a minimum of two years,
 31 or 2,000 hours, of investigative experience that consists of actual work performed as [an

1 investigator] a private investigator for a private agency, the federal government, or a state, county,
2 or municipal government.

3 ~~[(d) Applicants]~~ (e) (i) An applicant for an agency license shall substantiate investigative
4 work experience claimed as years of qualifying experience and provide the exact details as to the
5 character and nature of the experience on a form prescribed by the department and certified by the
6 applicant's employers. ~~[This certification is subject to independent verification by the board.]~~

7 (ii) If ~~[applicants are]~~ the applicant is unable to supply written certification from an
8 employer in whole or in part, ~~[applicants]~~ the applicant may offer written certification from
9 persons other than an employer covering the same subject matter for consideration by the board.

10 (iii) The ~~[burden of proving]~~ applicant shall prove completion of the required experience
11 ~~[is on the applicant]~~ to the satisfaction of the board and the board may independently verify any
12 certification offered on behalf of the applicant.

13 (2) (a) An applicant for ~~[registration]~~ a registrant license shall meet all ~~[of the above]~~
14 qualification standards of this section, except Subsection~~[(c)]~~ (1)(d). An applicant ~~[must]~~ shall
15 have ~~[had]~~ a minimum of one year, or 1,000 hours, of investigative experience that consists of
16 actual work performed as ~~[an investigator]~~ a private investigator for a private agency, the federal
17 government, a state, county, or municipal government.

18 (b) A licensed registrant shall only work as an employee of, or an independent contractor
19 with, licensed agencies as provided in Subsection 53-9-102(18), and may not:

20 (i) advertise his services or conduct investigations for the general public; or

21 (ii) employ other private investigators or hire them as independent contractors.

22 (3) (a) An applicant for an apprentice ~~[registration]~~ license, lacking the experience required
23 for a ~~[registration, must]~~ registrant license, shall meet all of the qualification standards in
24 Subsection (1), except Subsection (1)(d) and complete an [apprenticeship] apprentice application
25 [and].

26 (b) An apprentice shall work under the ~~[close]~~ direct supervision and guidance of a
27 licensed ~~[Private Investigative Agency]~~ agency, full-time for one year, or 1,000 hours, prior to
28 ~~[being eligible]~~ eligibility for ~~[registration to work alone as a registered employee or contract]~~ a
29 registrant license. ~~[After completing the requirements, the apprentice will be eligible to apply for~~
30 registration.] A licensed apprentice shall only work under the direction of a licensed agency as
31 provided in Subsection 53-9-102(5), and may not:

1 (i) advertise his services or conduct investigations for the general public; or

2 (ii) employ other private investigators.

3 (4) ~~(a) [An applicant having a law-enforcement degree or POST certification may apply~~
4 ~~to the board for registration. The decision of the board is final.]~~ An applicant for an agency,
5 registrant, or apprentice license may be eligible for a license without meeting all or part of the
6 investigative work experience required by this section if the applicant:

7 (i) has a criminal justice degree from an accredited college or university;

8 (ii) is certified by Peace Officer Standards and Training; or

9 (iii) can substantiate other similar law enforcement or investigative training in the areas
10 set forth in Subsection 53-9-102(16).

11 (b) The board shall determine whether or not training may replace the work experience
12 requirement and to what extent.

13 Section 7. Section **53-9-109** is amended to read:

14 **53-9-109. Application for agency license -- Bond -- Workers' compensation.**

15 (1) Every application for an agency license to engage in the private investigative business
16 shall set forth information to assist the commissioner in determining the applicant's ability to meet
17 the requirements prescribed in this chapter and contain the following:

18 (a) the full name and business address of the applicant;

19 (b) two passport-size color photographs of the applicant;

20 (c) the name under which the applicant intends to do business;

21 (d) a statement that the applicant intends to engage in the private investigative business;

22 ~~[(e) if the applicant is other than an individual, the full name and business address of each~~
23 ~~of its associates;]~~

24 ~~[(f)]~~ (e) a verified statement of the applicant's experience and qualifications as provided
25 in Section 53-9-108; and

26 ~~[(g)]~~ (f) the fee prescribed in Section 53-9-111. ~~[Only one agency fee is required for the~~
27 ~~licensee, associates and noninvestigative employees of each licensed agency.]~~

28 (2) Before the issuance of an original or renewal agency license, the applicant shall
29 provide to the department:

30 (a) a surety bond in the amount of \$10,000; and

31 (b) a certificate of workers' compensation insurance, if applicable.

1 (3) The bond required by this section shall be:

2 (a) executed and acknowledged by the applicant as principal and by a corporation licensed
3 to transact fidelity and surety business in this state as surety[. ~~The bond shall be~~];

4 (b) continuous in form and [~~shall~~] run concurrently with the license period[. ~~The bond~~
5 required by this chapter shall be];

6 (c) in favor of the state for the benefit of any person injured by any acts of a private
7 investigator, his agency, or his employees; and [is]

8 (d) subject to claims by any person who is injured by those acts.

9 (4) (a) The commissioner shall cancel the agency license of any licensed agency on the
10 cancellation of the surety bond.

11 (b) The license may be reinstated when the qualifying party [~~may reinstate the license on~~
12 ~~filing~~]:

13 [(a)] (i) files a surety bond that is concurrent with the remainder of the license period; and

14 [(b) ~~payment of~~] (ii) pays the reinstatement fee prescribed [~~under~~] in Section 53-9-111.

15 Section 8. Section **53-9-110** is amended to read:

16 **53-9-110. Application for registrant or apprentice license.**

17 (1) Every application for [~~registration~~] a registrant or apprentice license shall provide
18 information to assist the commissioner in determining the applicant's ability to meet the
19 requirements prescribed in this chapter and contain the following:

20 (a) the full name and address of the applicant;

21 (b) two passport-size color photographs of the applicant;

22 (c) the name of the licensed agency for which the applicant will be an employee,
23 apprentice, or contract registrant, if applicable;

24 (d) authorization of the [~~qualifying party~~] licensed agency or [~~his~~] its designee to [~~issue~~
25 ~~an employee, apprentice, or contract registration~~] employ the apprentice or contract with the
26 registrant, if applicable; [~~and~~]

27 (e) a verified statement of the applicant's experience and qualifications[. ~~as provided in~~
28 Section 53-9-108; and

29 (f) the fee prescribed in Section 53-9-111.

30 (2) An application for [~~an employee, apprentice, or contract registration~~] a registrant or
31 apprentice license or renewal shall be accompanied by[. ~~(a) the fee prescribed in Section~~

1 53-9-111; and (b)] a surety bond in the amount of \$10,000.

2 [~~(3) An original employee, apprentice, or contract registration is valid from the date of~~
3 ~~issuance to the date of expiration of the agency license under which the employee, apprentice, or~~
4 ~~contract registrant is employed. The renewal period of an employee, apprentice, or contract~~
5 ~~registration runs concurrently with the agency license. An employee, apprentice, or contract~~
6 ~~registration may be denied as described in Subsections 53-9-113(2) and (3) and shall be canceled~~
7 ~~upon the cancellation, termination, or revocation of the agency license under which the employee~~
8 ~~or contract registration is issued.]~~

9 [~~(4) An employee or apprentice registration or renewal shall not be issued to an applicant~~
10 ~~unless the employer has on file with the department evidence of current workers' compensation~~
11 ~~coverage and may be reinstated only on verification of the reinstatement of workers' compensation~~
12 ~~coverage and payment of the reinstatement fee prescribed in Section 53-9-111. This does not~~
13 ~~apply to the contract registrant.]~~

14 Section 9. Section **53-9-111** is amended to read:

15 **53-9-111. License and registration fees -- Deposit in General Fund.**

16 (1) Fees for licensure~~[, registration,]~~ and renewal shall be as follows:

17 (a) for an original agency license application~~[,]~~ and license, \$200, plus an additional fee
18 for the costs of fingerprint processing and background investigation;

19 (b) for the renewal of an agency license, \$100;

20 (c) for an original registrant or apprentice license application ~~[for registration,]~~ and license,
21 \$100, plus an additional fee for the costs of fingerprint processing and background investigation;

22 (d) for the renewal of ~~[each registration]~~ a registrant or apprentice license, \$50;

23 ~~[(e) for an original application for an apprentice registration, \$100 plus an additional fee~~
24 ~~for the costs of fingerprint processing and background investigation;]~~

25 ~~[(f) for the renewal of each apprentice registration, if necessary due to lack of required~~
26 ~~hours, \$50;]~~

27 ~~[(g)]~~ (e) for filing an agency renewal application more than 30 days after the expiration
28 date of the license, a delinquency fee of \$50;

29 ~~[(h)]~~ (f) for filing a registrant or apprentice renewal application more than 30 days after
30 the expiration date of the registration, a delinquency fee of \$30;

31 ~~[(i) for filing an apprentice renewal application more than 30 days after the expiration date~~

1 of the apprentice license, a delinquency fee of \$30;]

2 [(j)] (g) for the reinstatement of [an agency] any license, \$50;

3 [(k)] (h) for a duplicate identification card, \$10; and

4 [(f) for reinstatement of an identification card, \$10; and]

5 [(m)] (i) for the fingerprint processing fee, an amount that does not exceed the cost to the
6 department charged by the Federal Bureau of Investigation for fingerprint processing for the
7 purpose of obtaining federal criminal history record information.

8 (2) (a) The commissioner may renew a license [~~or registration~~] granted under this chapter
9 upon receipt of [an] a renewal application on forms as prescribed by the commissioner and upon
10 receipt of the fees prescribed in Subsection (1).

11 (b) The renewal of [an agency] a license [~~or registration~~] requires the filing of a surety
12 bond as described in Subsections 53-9-109(2) and (3). Renewal of a license [~~or registration~~] shall
13 not be granted more than 90 days after expiration.

14 (c) A licensee [~~or registrant~~] may not engage in any activity subject to this chapter during
15 any period between the date of expiration of the license [~~or registration~~] and the renewal of the
16 license [~~or registration~~].

17 (3) (a) The commissioner shall renew a suspended license [~~or registration as provided in~~
18 ~~this chapter.~~] if:

19 (i) the period of suspension has been completed;

20 (ii) the commissioner has received a renewal application from the applicant on forms
21 prescribed by the commissioner; and

22 (iii) the applicant has:

23 (A) filed a surety bond as described by Subsections 53-9-109(2) and (3); and

24 (B) paid the fees required by this section for renewal, including a delinquency fee if the
25 application is not received by the commissioner within 30 days of the termination of the
26 suspension.

27 (b) Renewal of the license [~~or registration~~] does not entitle the licensee [~~or registrant~~],
28 while the license [~~or registration~~] remains suspended and until it is reinstated, to engage in any
29 activity regulated by this chapter, or in any other activity or conduct in violation of the order or
30 judgment by which the license [~~or registration~~] was suspended.

31 (4) The commissioner shall not reinstate a revoked license [~~or registration~~] or accept an

1 application for a license [~~or registration~~] from a person whose license [~~or registration~~] has been
 2 revoked for at least one year from the date of revocation.

3 (5) All fees, except the fingerprint processing fee, collected by the department under this
 4 section shall be deposited in the General Fund.

5 Section 10. Section **53-9-112** is amended to read:

6 **53-9-112. Issuance of license and identification card to applicant -- License period**
 7 **-- Expiration of application -- Transfer of license prohibited.**

8 (1) The commissioner shall issue [~~an agency~~] a license to an applicant who complies with
 9 the provisions of this chapter. Each license issued under this chapter shall:

10 (a) contain the name and address of the licensee and the number of the license;

11 (b) its agency, registrant, or apprentice license designation; and [~~shall~~]

12 (c) be issued for a period of two years.

13 (2) On the issuance of a license, an identification card [~~of dimensions 2-1/2 x 4-1/2 inches~~]
 14 [~~with~~] shall:

15 (a) be issued without charge to the licensee [~~if an individual, or if the licensee is other than~~
 16 ~~an individual, to each of its associates, and is evidence the licensee and his associates are licensed~~
 17 ~~pursuant to this chapter.~~]; and

18 (b) state on its face whether the bearer holds an agency, registrant, or apprentice license.

19 (3) (a) [~~If a person to whom the card of a licensee other than an individual is issued~~
 20 ~~terminates his position, office, or association with the licensee, he shall surrender the card to the~~
 21 ~~licensee and within five days thereafter the licensee shall mail or deliver the card to the~~
 22 ~~commissioner for cancellation.] A registrant identification card shall state that the licensee is
 23 under the direction of a licensed agency and may not do investigative work independently for the
 24 public.~~

25 (b) An apprentice identification card shall state that the licensee is under the direct
 26 supervision of a licensed agency, and may not do investigative work independently for the public.

27 (4) Upon request by any person, the licensee shall immediately identify the name, business
 28 address, and phone number of the licensed agency for which the licensee is an employee or
 29 independent contractor.

30 [(4)] (5) (a) On notification by the commissioner to an applicant that the [~~agency~~] license
 31 is not complete, or is not ready for issuance pending additional information, the applicant shall

1 complete the application process and provide the additional information within 90 days.

2 (b) Failure to complete the process shall result in the application being cancelled and all
3 fees forfeited.

4 (c) Subsequent application by the same applicant requires the payment of all application
5 and license fees prescribed in Section 53-9-111.

6 ~~[(5)]~~ (6) A licensee shall notify the commissioner of any change in the name or address
7 of his business ~~[and of any change of associates]~~ within ~~[30]~~ 60 days of the change~~[-]~~ and failure
8 to so notify will result in the automatic suspension of the license. To relieve the suspension, the
9 licensee must apply for reinstatement and pay the fee prescribed in Section 53-9-111.

10 ~~[(6) All new associates shall submit applications on forms prescribed by the commissioner.
11 Upon board approval, identification cards will be issued without charge.]~~

12 (7) A license issued under this chapter is not transferable or assignable.

13 Section 11. Section **53-9-113** is amended to read:

14 **53-9-113. Grounds for denial of a license -- Appeal.**

15 (1) The board may deny ~~[an agency]~~ a license or the renewal of ~~[an agency]~~ a license if
16 the applicant has:

17 (a) committed an act that, if committed by a licensee, would be grounds for probation,
18 suspension, or revocation of a license under this chapter;

19 (b) ~~[has] employed [a business associate that is]~~ or contracted with a person who has been
20 refused a license under this chapter or who has had a license revoked;

21 (c) while not licensed under this chapter, committed, or aided and abetted the commission
22 of, any act for which a license is required by this chapter; or

23 (d) knowingly made a material misstatement in connection with an application for a
24 license or renewal of a license.

25 ~~[(2) The board may deny the issuance of an identification card to an applicant for an
26 agency, associate, or employee or contract registrant if the applicant fails to meet the qualifications
27 in Section 53-9-108.]~~

28 ~~[(3)]~~ (2) (a) The board's denial of ~~[the issuance of an identification card or]~~ a license under
29 this chapter shall:

30 (i) be in writing ~~[and]~~;

31 (ii) describe the basis for the denial~~[- The denial shall]~~; and

1 (iii) inform the applicant that if the applicant desires a hearing to contest the denial, [he]
2 the applicant shall submit a request in writing to the board within 30 days after the [issuance of
3 the] denial has been sent by the department by certified mail to the applicant.

4 (b) The board shall schedule a hearing on the denial for the next board meeting[; but not
5 later than 60 days after receipt of the request] after the applicant's request for a hearing has been
6 received by the board.

7 [(4)] (3) The decision of the board may be appealed to the commissioner, who may:

8 (a) return the case to the board for reconsideration;

9 (b) modify the board's decision; or

10 (c) reverse the board's decision.

11 (4) The department shall promptly issue a final order of the commissioner and send the
12 order to the applicant.

13 (5) Decisions of the commissioner are subject to judicial review pursuant to Section
14 63-46b-15.

15 Section 12. Section **53-9-115** is amended to read:

16 **53-9-115. Business name and address -- Posting of license -- Advertising.**

17 (1) [An agency] (a) Subject to the provisions of this chapter, a licensee may conduct an
18 investigative business under a name other than the licensee's by:

19 (i) complying with the requirements of Title 42, Chapter 2, Conducting Business Under
20 Assumed Name[;]; and

21 (ii) providing a copy of the filed certificate to the commissioner.

22 (b) Failure to comply with Subsection (1)(a) shall result in the suspension of the license.

23 (2) Each [~~licensed agency~~] licensee shall have at least one physical location from which
24 the normal business of the agency is conducted. The address of this location shall be on file with
25 the commissioner at all times[. This] and is not a public record pursuant to Subsection
26 63-2-301(1)(b)(ii).

27 (3) The license certificate issued by the commissioner shall be posted in a conspicuous
28 place in the principal office of the [~~private investigative agency~~] licensee.

29 (4) [A] Subject to the provisions of this chapter, a licensee may solicit business through
30 any accepted form of advertising.

31 (a) [~~All advertisements~~] Any advertisement shall contain the licensee's name and license

1 number as it appears on the license certificate.

2 (b) A licensee may not use false, deceptive, or misleading advertising.

3 Section 13. Section **53-9-116** is amended to read:

4 **53-9-116. Divulging investigative information -- False reports prohibited.**

5 (1) Except as otherwise provided by this chapter, a licensee~~[, associate, registrant, or~~
6 ~~apprentice of a licensee]~~ may not divulge or release to anyone other than his client or employer the
7 contents of an investigative file acquired in the course of licensed investigative activity. However,
8 the board shall have access to investigative files if the client for whom the information was
9 acquired, or his lawful representative, alleges a violation of this chapter by the licensee ~~[or a~~
10 ~~registrant, the licensed agency or any employee]~~ or if the prior written consent of the client to
11 divulge or release the information has been obtained.

12 (2) A licensee~~[, associate, registrant, apprentice, or employee of a licensee]~~ may not
13 willfully make a false statement or report to a client, employer, the board, or any authorized
14 representative of the department, concerning information acquired in the course of activities
15 regulated by this chapter.

16 (3) The licensee shall submit investigative reports to a client at times and in the manner
17 agreed upon between the licensee and the client.

18 (4) Upon demand by the client, the licensee shall divulge to the client the results of an
19 investigation if payment in full has been tendered for the charges levied.

20 (5) The licensee has full right to withdraw from any case and refund any portion of a
21 retainer for which investigative work has not been completed.

22 Section 14. Section **53-9-117** is amended to read:

23 **53-9-117. Authority to investigate complaint -- Filing of complaints -- Response --**
24 **Retention of records -- Appeal -- Fines collected.**

25 (1) The commissioner or board may initiate an investigation of any ~~[licensee, associate,~~
26 ~~registrant, apprentice, employee, or]~~ person ~~[if they are]~~ advertising ~~[their]~~ services or engaged in
27 performing services that require ~~[licensure or registration]~~ a license under this chapter and shall
28 investigate if a licensee ~~[or registrant]~~ is engaged in activities that do not comply with or are
29 prohibited by this chapter.

30 (2) The commissioner shall enforce the provisions of this chapter without regard to the
31 place or location in which a violation may have occurred, and on the complaint of any person, may

1 investigate any alleged violation of this chapter or the business and business methods of any
2 licensee[, registrant, or employee of a licensee] or applicant for licensure [or registration] under
3 this chapter.

4 (3) Complaints against any licensee[, associate, registrant, apprentice, or employee of a
5 licensee] shall be filed with the commissioner in writing on [prescribed] forms prescribed by the
6 commissioner.

7 (a) Upon receipt of a complaint, or at the request of the board, the commissioner shall
8 assign [it] the complaint to [the board] an investigator within the department.

9 (b) The [board] department will provide a copy of the complaint to the licensee [and
10 associate, registrant, apprentice, or employee and they] who shall answer the complaint in writing
11 within 15 working days of the date the complaint is sent by the department by certified mail.

12 (4) In any investigation undertaken by the [board or commissioner] department, each
13 licensee[, associate, registrant, apprentice, applicant, agency, or employee,] on request[-] shall
14 provide records and truthfully respond to questions concerning activities regulated under this
15 chapter.

16 (a) These records shall be maintained for five years at the principal place of business of
17 the licensee or at another location approved by the board for a person whose license has been
18 terminated, canceled, or revoked.

19 (b) On request by the [board] department the licensee shall:

20 (i) during normal business hours or other time acceptable to the parties, [the] make its
21 records [shall be made] available immediately to the [board] department unless [the board] the
22 department determines that an extension may be granted[-. The licensee shall]; and

23 (ii) provide copies of any business records requested by the [board or commissioner]
24 department.

25 (5) Upon completion of the investigation, the department shall report its findings of fact
26 to the board, and shall make a recommendation as to whether disciplinary action is warranted
27 under Subsection 53-9-118(1), including whether emergency action should be taken under
28 Subsection 53-9-118(2).

29 (6) (a) If the department recommends disciplinary action, a notice of the recommendations
30 in Subsection (5) shall be sent by the department to the licensee by certified mail.

31 (b) The notice shall include the right to request a hearing before the board, and require that

1 any such request shall be in writing and received by the board within 30 working days of the date
2 the notice of recommendations was sent by the department to the licensee by certified mail.

3 Section 15. Section **53-9-118** is amended to read:

4 **53-9-118. Grounds for disciplinary action -- Types of action.**

5 (1) [~~The following constitute grounds for which disciplinary action may be taken against~~
6 ~~a licensee, associate, registrant, apprentice, or employee of the licensee engaged in activities~~
7 ~~regulated under this chapter]~~ The board may suspend or revoke a license or registration or deny
8 an application for a license if a person engages in any of the following:

9 (a) fraud or willful misrepresentation in applying for an original license or [~~registration~~]
10 renewal of an existing license [~~or registration~~];

11 (b) using any letterhead, advertising, or other printed matter in any manner representing
12 that [~~he~~] the licensee is an instrumentality of the federal government, a state, or any political
13 subdivision of a state;

14 (c) using a name different from that under which [~~he~~] the licensee is currently licensed for
15 any advertising, solicitation, or contract to secure business unless the name is an authorized
16 fictitious name;

17 (d) impersonating, permitting, or aiding and abetting an employee or [~~registrant~~]
18 independent contractor to impersonate a law enforcement officer or employee of the United States,
19 any state, or a political subdivision of a state;

20 (e) knowingly violating, advising, encouraging, or assisting the violation of any statute,
21 court order, or injunction in the course of a business regulated under this chapter;

22 (f) falsifying fingerprints or photographs while operating under this chapter;

23 (g) conviction of a felony;

24 (h) conviction of any act involving illegally using, carrying, or possessing a dangerous
25 weapon;

26 (i) conviction of any act involving moral turpitude;

27 (j) conviction of any act of personal violence or force against any person, or conviction
28 of threatening to commit any act of personal violence or force against any person;

29 (k) soliciting business for an attorney in return for compensation;

30 (l) conviction of any act constituting dishonesty or fraud;

31 (m) being placed on probation, parole, or named in an outstanding arrest warrant;

1 (n) committing~~[-]~~ or permitting any ~~[associate, registrant, or]~~ employee or independent
2 contractor to commit any act during the period ~~[between the expiration of a license or registration~~
3 ~~for failure to renew within the time fixed by this chapter, and the reinstatement of the license or~~
4 ~~registration, that would be cause for the suspension or revocation of the license or registration or~~
5 ~~grounds for denial of the application for the license or registration]~~ when the license is expired or
6 suspended;

7 (o) willfully neglecting to render to a client services or a report as agreed between the
8 parties and for which compensation has been paid or tendered in accordance with the agreement
9 of the parties~~[-. However, if]~~ unless the ~~[investigator]~~ licensee chooses to withdraw from the case
10 and returns the funds for work not yet ~~[done, no violation of this section exists]~~ completed;

11 (p) the unauthorized release of information acquired on behalf of a client by a licensee,
12 ~~[associate, or registrant]~~ or its employee or contract agent as a result of activities regulated under
13 this chapter;

14 (q) failing ~~[or refusing]~~ to cooperate with, misrepresenting to, or refusing access to
15 business or investigative records requested by the board or an authorized representative of the
16 department engaged in an official investigation pursuant to this chapter;

17 (r) employing or contracting with any ~~[unregistered or improperly registered person or]~~
18 unlicensed or improperly licensed person or agency to conduct activities regulated under this
19 chapter if the licensure ~~[or registration]~~ status was known or could have been ascertained by
20 reasonable inquiry;

21 (s) permitting, authorizing, aiding, or in any way assisting ~~[a registered]~~ an employee to
22 conduct services as described in this chapter on an independent contractor basis and not under the
23 authority of the licensed agency;

24 (t) failure to maintain in full force and effect workers' compensation insurance, if
25 applicable;

26 (u) conducting private investigation services regulated by this chapter on a revoked or
27 suspended license ~~[or registration];~~

28 (v) accepting employment, contracting, or in any way engaging in employment that has
29 an adverse impact on investigations being conducted on behalf of clients;

30 (w) advertising in a false, deceptive, or misleading manner;

31 (x) refusing to display the identification card issued by the department to any person

1 having reasonable cause to verify the validity of the license [~~or registration~~]; [~~or~~
2 (y) committing any act of unprofessional conduct;
3 (z) conviction of any act of illegally obtaining or disseminating private, controlled, or
4 protected records under Section 63-2-801; or
5 (aa) engaging in any other conduct prohibited by this chapter.
6 [~~(2) On completion of an investigation, the board may:~~
7 [~~(a) dismiss the case;~~
8 [~~(b) take emergency action;~~
9 [~~(c) issue a letter of concern, if applicable;~~
10 [~~(d) impose a fine not to exceed \$500; or~~
11 [~~(e) place all records, evidence findings, and conclusions and any other information~~
12 ~~pertinent to the investigation in the confidential and protected records section of the file~~
13 ~~maintained at the department.]~~
14 [~~(3) A letter of concern is a document that is retained and may be used in future~~
15 ~~disciplinary actions against a licensee.]~~
16 [~~(4)~~ (2) (a) If the board finds, based on [~~its~~] the investigation, that the public health,
17 safety, or welfare requires emergency action, the board may order a summary suspension of a
18 license [~~or registration~~] pending proceedings for revocation or other action.
19 (b) If the board issues [~~this~~] a summary suspension order, the commissioner shall issue to
20 the licensee[~~, registrant, apprentice, or employee~~] a written notice of [~~complaint and formal~~
21 ~~hearing, setting forth the charges made against the licensee, registrant, apprentice, or employee and~~
22 ~~their~~] the order and indicate the licensee's right to request a formal hearing before the board [~~within~~
23 ~~60 days~~].
24 (c) The licensee's request for formal hearing shall be in writing, and received by the
25 department within 30 working days of the date the summary suspension was sent by the
26 department to the licensee by certified mail.
27 [~~(5)~~ (3) If the board finds, based on the investigation or hearing, that a violation [~~of~~] under
28 Subsection (1) has occurred, notice will be sent to the licensee[~~, registrant, apprentice, or~~
29 ~~employee~~] of the [~~results of the hearing~~] board's decision by mailing a true copy to the licensee's[~~,~~
30 ~~registrant's, apprentice's, or employee's~~] last-known address in the department's files by certified
31 mail, return receipt requested.

1 ~~[(6)]~~ (4) Based on information the ~~[Private Investigator Hearing Board]~~ board receives
2 from the investigation or during a hearing it may do any of the following:

3 (a) dismiss the complaint if the board believes it is without merit;

4 (b) ~~[fix a period and terms of probation best adapted to educate the licensee, registrant,~~
5 apprentice, or employee] take emergency action;

6 (c) issue a letter of concern, if applicable;

7 (d) impose a civil fine not to exceed \$500;

8 ~~[(e)]~~ (e) place the license ~~[or registration]~~ on suspension for a period of not more than 12
9 months;

10 ~~[(d)]~~ (f) revoke the license or registration; ~~[or]~~ and

11 ~~[(e)]~~ impose a civil fine not to exceed \$500.;

12 (g) place all records, evidence findings, and conclusion, and any other information
13 pertinent to the investigation, in a confidential and protected records section of the file maintained
14 at the department.

15 ~~[(7) On a finding by the board that a licensee committed a violation of Subsection (1), the~~
16 probation, suspension, or revocation applies to all licenses, registrations, or employees under the
17 agency license. If a registrant or apprentice committed a violation of Subsection (1), the probation,
18 suspension, or revocation applies only to the license or registrations held by an apprentice
19 registrant or registrant under this chapter.]

20 (5) A letter of concern issued pursuant to Section 53-9-118 is a document that is retained
21 by the department and may be used in future disciplinary actions against a licensee.

22 ~~[(8)]~~ (6) Appeal of the board's decision shall be made in writing to the commissioner
23 within 15 days of the date of issuance of the board's decision. The commissioner shall review the
24 finding by the board and may affirm, return to the board for reconsideration, reverse, adopt,
25 modify, supplement, amend, or reject the recommendation of the board.

26 ~~[(9) A person may appeal the commissioner's decision to the district court pursuant to~~
27 Section 63-46b-15.;

28 (7) The department shall issue a final written order within 30 days outlining the
29 commissioner's decision on the appeal. The final order is final agency action for purposes of
30 judicial review under Section 63-46b-15.

31 ~~[(10)]~~ (8) All fines collected under this section shall be deposited in the General Fund.

1 Section 16. Section **53-9-119** is amended to read:

2 **53-9-119. Violation -- Penalty.**

3 [~~A licensee, registrant, or employee~~] Any person who violates any provision of this chapter
4 is guilty of a class A misdemeanor.

5 Section 17. **Repealer.**

6 This act repeals:

7 Section **53-9-114, Duty of employer to issue identification card to registrant --**

8 **Temporary registration -- Denial -- Form of identification card.**

9 Section **53-9-120, Grandfather provision.**

Legislative Review Note

as of 11-10-97 7:39 AM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel