

**PRIVATE INVESTIGATOR LICENSURE
AMENDMENTS**

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Margaret Dayton

This act modifies the Public Safety Code by providing that the Bureau of Criminal Identification will issue private investigator licenses within a specified number of days, and that the Private Investigator Hearing and Licensure Board will hear appeals from the bureau's decisions, rather than issuing the licenses. The act amends the definition of direct supervision. The act also allows the board to consider mitigating circumstances when reviewing the applicant's good moral character. This act takes effect on July 1, 2003.

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

AMENDS:

53-9-102, as last amended by Chapter 212, Laws of Utah 1998

53-9-103, as last amended by Chapter 212, Laws of Utah 1998

53-9-105, as last amended by Chapter 212, Laws of Utah 1998

53-9-106, as enacted by Chapter 314, Laws of Utah 1995

53-9-108, as last amended by Chapter 212, Laws of Utah 1998

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

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

53-9-102. Definitions.

In this chapter, unless otherwise stated:

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

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

(3) "Agency" means a person who holds an agency license pursuant to this chapter, and includes one who employs an individual for wages and salary, and withholds all legally required deductions and contributions, or contracts with a registrant or an apprentice on a part-time or case-by-case basis to conduct an investigation on behalf of the agency.

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

(5) "Apprentice" means a person who holds an apprentice license pursuant to this chapter, has not met the requirements for registration, and works under the direct supervision and guidance of an agency.

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

(7) "Bureau" means the Bureau of Criminal Identification created in Section 53-10-201.

~~[(7)]~~ (8) "Commissioner" means the commissioner of the Department of Public Safety.

~~[(8)]~~ (9) "Conviction" means an adjudication of guilt by a federal, state, or local court resulting from trial or plea, including a plea of no contest, regardless of whether the imposition of sentence was suspended.

~~[(9)]~~ (10) "Department" means the Department of Public Safety.

~~[(10)]~~ (11) "Direct supervision" means that the agency or employer:

- (a) is responsible for, and authorizes, the type and extent of work assigned;
- (b) reviews and approves all work produced by the apprentice before it goes to the client;

[and]

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

(d) is immediately available to the apprentice for verbal contact, including by electronic means.

~~[(11)]~~ (12) "Emergency action" means a summary suspension of a license pending revocation, suspension, or probation in order to protect the public health, safety, or welfare.

~~[(12)]~~ (13) "Employee" means an individual who works for an agency or other employer,

is listed on the agency's or employer's payroll records, and is under the agency's or employer's direction and control. An employee is not an independent contractor.

~~[(13)]~~ (14) "Identification card" means a card issued by the commissioner to a qualified applicant for an agency, registrant, or apprentice license.

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

~~[(15)]~~ (16) "Licensee" means a person to whom an agency, registrant, or apprentice license is issued by the department.

~~[(16)]~~ (17) (a) "Private investigator or private detective" means any person, except collection agencies and credit reporting agencies, who, for consideration, engages in business or accepts employment to conduct any investigation for the purpose of obtaining information with reference to:

(i) crime, wrongful acts, or threats against the United States or any state or territory of the United States;

(ii) the identity, reputation, character, habits, conduct, business occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movements, whereabouts, affiliations, associations, or transactions of any person or group of persons;

(iii) the credibility of witnesses or other persons;

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

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

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

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

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

(ix) serving civil process.

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

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

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

~~[(17)]~~ (18) "Qualifying party" means the individual meeting the qualifications under this chapter for a private investigator license.

~~[(18)]~~ (19) "Registrant" means any person who holds a registrant license pursuant to this chapter. The registrant performs private investigative work either as an employee on an employer's payroll or, on a contract with an agency, part-time, or case-by-case basis, with a minimum amount of direction.

~~[(19)]~~ (20) "Restructuring" means any change in the legal status of a business.

~~[(20)]~~ (21) "Unprofessional conduct" means any of the following:

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

(b) aiding or abetting a person who is not licensed pursuant to this chapter in representing that person as a private investigator or registrant in this state;

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

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

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

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

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

53-9-103. Commissioner of Public Safety to administer -- Bureau to issue licenses -- Records -- Bonds -- Rulemaking.

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

(2) (a) The bureau, acting at the direction of the commissioner, shall issue a private investigator license to any applicant who meets qualifications for licensure under Section 53-9-108.

(b) The bureau shall issue the license to a qualified applicant within five business days of receipt of the application.

~~[(2)]~~ (3) (a) The ~~[commissioner]~~ bureau shall keep records of:

~~[(a)]~~ (i) all applications for licenses under this chapter; and

~~[(b)]~~ (ii) all bonds and proof of workers' compensation required to be filed.

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

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

(5) The ~~[commissioner]~~ bureau shall maintain a list of all licensees that have had a license revoked, suspended, placed on probation, or canceled and a written record of complaints filed against licensees.

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

Section 3. Section **53-9-105** is amended to read:

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

(1) The board shall:

(a) review all applications for licenses and renewals of licenses for private investigators

and make recommendations to the commissioner for approval or disapproval; ~~[and]~~

(b) upon receiving a timely filed petition, review within a reasonable time the denial, suspension, or revocation of a private investigator license; and

~~[(b)]~~ (c) review all complaints and make recommendations to the commissioner regarding disciplinary action.

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

Section 4. Section **53-9-106** is amended to read:

53-9-106. Meetings -- Hearings.

(1) The board shall meet quarterly, unless the board has no business to conduct during that quarter, and shall also meet at the call of the chair~~[-, but not less than once each quarter].~~

(2) A quorum consists of three members.

(3) If a member has three unexcused absences within a 12-month period, the board may hold a hearing to determine if that board member should be released from board duties.

Section 5. Section **53-9-108** is amended to read:

53-9-108. Qualifications for licensure.

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

(b) An applicant may not have been:

(i) convicted of a felony;

(ii) convicted of any act involving illegally using, carrying, or possessing a dangerous weapon;

(iii) convicted of any act of personal violence or force on any person or convicted of threatening to commit any act of personal violence or force against another person;

(iv) convicted of any act constituting dishonesty or fraud;

(v) convicted of any act involving moral turpitude;

(vi) placed on probation or parole;
(vii) named in an outstanding arrest warrant; or
(viii) convicted of illegally obtaining or disclosing private, controlled, or protected records as provided in Section 63-2-801.

(c) In assessing good moral character under Subsection (1)(b), the board shall consider any mitigating circumstances presented by an applicant regarding information under Subsections (1)(b)(vi) and(viii).

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

~~[(d)]~~ (e) An applicant shall have completed a minimum of two years, or 2,000 hours, of investigative experience that consists of actual work performed as a private investigator for a private agency, the federal government, or a state, county, or municipal government.

~~[(e)]~~ (f) (i) An applicant for an agency license shall substantiate investigative work experience claimed as years of qualifying experience and provide the exact details as to the character and nature of the experience on a form prescribed by the department and certified by the applicant's employers.

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

(iii) The applicant shall prove completion of the required experience to the satisfaction of the board and the board may independently verify any certification offered on behalf of the applicant.

(2) (a) An applicant for a registrant license shall meet all qualification standards of this section, except Subsection (1)(d). An applicant shall have a minimum of one year, or 1,000 hours, of investigative experience that consists of actual work performed as a private investigator for a private agency, the federal government, a state, county, or municipal government.

(b) A licensed registrant shall only work as an employee of, or an independent contractor with, licensed agencies as provided in Subsection 53-9-102~~[(+8)]~~(19), and may not:

- (i) advertise his services or conduct investigations for the general public; or
- (ii) employ other private investigators or hire them as independent contractors.

(3) (a) An applicant for an apprentice license, lacking the experience required for a registrant license, shall meet all of the qualification standards in Subsection (1), except Subsection (1)(d) and complete an apprentice application.

(b) An apprentice shall work under the direct supervision and guidance of a licensed agency, full-time for one year, or 1,000 hours, prior to eligibility for a registrant license. A licensed apprentice shall only work under the direction of a licensed agency as provided in Subsection 53-9-102(5), and may not:

- (i) advertise his services or conduct investigations for the general public; or
- (ii) employ other private investigators.

(4) (a) An applicant for an agency, registrant, or apprentice license may be eligible for a license without meeting all or part of the investigative work experience required by this section if the applicant:

- (i) has a criminal justice degree from an accredited college or university;
- (ii) is certified by Peace Officer Standards and Training; or
- (iii) can substantiate other similar law enforcement or investigative training in the areas set forth in Subsection 53-9-102[~~(16)~~](17).

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

Section 6. Effective date.

This act takes effect on July 1, 2003.