

1                                   **PRIVATE INVESTIGATOR LICENSURE**

2                                   **AMENDMENTS**

3                                   2003 GENERAL SESSION

4                                   STATE OF UTAH

5                                   **Sponsor: Margaret Dayton**

6   **This act modifies the Public Safety Code by providing that the Bureau of Criminal**  
7   **Identification will issue private investigator licenses within a specified number of days,**  
8   **and that the Private Investigator Hearing and Licensure Board will hear appeals from**  
9   **the bureau's decisions, rather than issuing the licenses. The act amends the definition of**  
10 **direct supervision. The act also allows the bureau to consider mitigating circumstances**  
11 **when reviewing the applicant's good moral character. This act takes effect on July 1,**  
12 **2003.**

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

14 AMENDS:

15         **53-9-102**, as last amended by Chapter 212, Laws of Utah 1998

16         **53-9-103**, as last amended by Chapter 212, Laws of Utah 1998

17         **53-9-105**, as last amended by Chapter 212, Laws of Utah 1998

18         **53-9-106**, as enacted by Chapter 314, Laws of Utah 1995

19         **53-9-108**, as last amended by Chapter 212, Laws of Utah 1998

20         **53-9-113**, as last amended by Chapter 212, Laws of Utah 1998

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

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

23         **53-9-102. Definitions.**

24         In this chapter, unless otherwise stated:

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



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

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

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

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

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

42 (7) "Bureau" means the Bureau of Criminal Identification created in Section  
43 53-10-201.

44 [~~(7)~~] (8) "Commissioner" means the commissioner of the Department of Public Safety.

45 [~~(8)~~] (9) "Conviction" means an adjudication of guilt by a federal, state, or local court  
46 resulting from trial or plea, including a plea of no contest, regardless of whether the imposition  
47 of sentence was suspended.

48 [~~(9)~~] (10) "Department" means the Department of Public Safety.

49 [~~(10)~~] (11) "Direct supervision" means that the agency or employer:

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

51 (b) reviews and approves all work produced by the apprentice before it goes to the  
52 client; [~~and~~]

53 (c) [~~closely~~] supervises and provides direction and guidance to the apprentice in the  
54 performance of his assigned work; and

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

57 [~~(11)~~] (12) "Emergency action" means a summary suspension of a license pending  
58 revocation, suspension, or probation in order to protect the public health, safety, or welfare.

59           ~~[(12)]~~ (13) "Employee" means an individual who works for an agency or other  
60 employer, is listed on the agency's or employer's payroll records, and is under the agency's or  
61 employer's direction and control. An employee is not an independent contractor.

62           ~~[(13)]~~ (14) "Identification card" means a card issued by the commissioner to a qualified  
63 applicant for an agency, registrant, or apprentice license.

64           ~~[(14)]~~ (15) "Letter of concern" means an advisory letter to notify a licensee that while  
65 there is insufficient evidence to support probation, suspension, or revocation of a license, the  
66 department informs the licensee of the need to modify or eliminate certain practices and that  
67 continuation of the activities that led to the information being submitted to the department may  
68 result in further disciplinary action against the licensee.

69           ~~[(15)]~~ (16) "Licensee" means a person to whom an agency, registrant, or apprentice  
70 license is issued by the department.

71           ~~[(16)]~~ (17) (a) "Private investigator or private detective" means any person, except  
72 collection agencies and credit reporting agencies, who, for consideration, engages in business  
73 or accepts employment to conduct any investigation for the purpose of obtaining information  
74 with reference to:

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

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

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

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

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

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

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

88           (viii) the business of "skip tracing" persons who have become delinquent in their  
89 lawful debts, either when hired by an individual, collection agency, or through the direct

90 purchase of the debt from a financial institution or entity owning the debt or judgment; or

91 (ix) serving civil process.

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

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

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

97 [~~17~~] (18) "Qualifying party" means the individual meeting the qualifications under  
98 this chapter for a private investigator license.

99 [~~18~~] (19) "Registrant" means any person who holds a registrant license pursuant to  
100 this chapter. The registrant performs private investigative work either as an employee on an  
101 employer's payroll or, on a contract with an agency, part-time, or case-by-case basis, with a  
102 minimum amount of direction.

103 [~~19~~] (20) "Restructuring" means any change in the legal status of a business.

104 [~~20~~] (21) "Unprofessional conduct" means any of the following:

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

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

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

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

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

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

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

119 **53-9-103. Commissioner of Public Safety to administer -- Duties -- Records --**  
120 **Bonds -- Rulemaking.**

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

122 (2) (a) The bureau, acting at the direction of the commissioner, shall issue a private  
123 investigator license to any applicant who meets qualifications for licensure under Section  
124 53-9-108.

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

127 [~~2~~] (3) (a) The [~~commissioner~~] bureau shall keep records of:

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

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

130 [~~3~~] (b) The records shall include statements as to whether a license or renewal license  
131 has been issued for each application and bond.

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

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

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

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

141 **53-9-105. Powers and duties of the board.**

142 (1) The board shall:

143 [~~a~~] ~~review all applications for licenses and renewals of licenses for private~~  
144 ~~investigators and make recommendations to the commissioner for approval or disapproval;~~  
145 ~~and]~~

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

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

150 (2) The board may take and hear evidence, administer oaths and affirmations, and  
151 compel by subpoena the attendance of witnesses and the production of books, papers, records,

152 documents, and other information relating to a formal complaint against or department  
153 investigation of a private investigator.

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

155 **53-9-106. Meetings -- Hearings.**

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

158 (2) A quorum consists of three members.

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

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

162 **53-9-108. Qualifications for licensure.**

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

165 (b) An applicant may not have been:

166 (i) convicted of a felony;

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

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

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

172 (v) convicted of any act involving moral turpitude;

173 (vi) placed on probation or parole;

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

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

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

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

182 [~~(d)~~] (e) An applicant shall have completed a minimum of two years, or 2,000 hours, of

183 investigative experience that consists of actual work performed as a private investigator for a  
184 private agency, the federal government, or a state, county, or municipal government.

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

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

192 (iii) The applicant shall prove completion of the required experience to the satisfaction  
193 of the ~~[board]~~ bureau and the ~~[board]~~ bureau may independently verify any certification offered  
194 on behalf of the applicant.

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

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

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

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

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

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

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

212 (ii) employ other private investigators.

213 (4) (a) An applicant for an agency, registrant, or apprentice license may be eligible for a

214 license without meeting all or part of the investigative work experience required by this section  
215 if the applicant:

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

220 (b) The [~~board~~] bureau shall determine whether or not training may replace the work  
221 experience requirement and to what extent.

222 Section 6. Section **53-9-113** is amended to read:

223 **53-9-113. Grounds for denial of a license -- Appeal.**

224 (1) The [~~board~~] bureau may deny a license or the renewal of a license if the applicant  
225 has:

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

228 (b) employed or contracted with a person who has been refused a license under this  
229 chapter or who has had a license revoked;

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

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

234 (2) (a) The [~~board's~~] bureau's denial of a license under this chapter shall:

235 (i) be in writing;

236 (ii) describe the basis for the denial; and

237 (iii) inform the applicant that if the applicant desires a hearing to contest the denial, the  
238 applicant shall submit a request in writing to the board within 30 days after the denial has been  
239 sent by the department by certified mail to the applicant.

240 (b) The board shall schedule a hearing on the denial for the next board meeting after  
241 the applicant's request for a hearing has been received by the board.

242 (3) The decision of the board may be appealed to the commissioner, who may:

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

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



245 (c) reverse the board's decision.

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

248 (5) Decisions of the commissioner are subject to judicial review pursuant to Section  
249 63-46b-15.

250 Section 7. **Effective date.**

251 This act takes effect on July 1, 2003.

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**Legislative Review Note**  
**as of 8-23-02 2:04 PM**

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

**Office of Legislative Research and General Counsel**

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**Fiscal Note****Private Investigator Licensure Amendments***31-Jan-03***Bill Number HB0217***9:02 AM*

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**State Impact**

It is estimated that provisions of this bill can be implemented with existing resources.

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**Individual and Business Impact**

No significant fiscal impact.

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**Office of the Legislative Fiscal Analyst**