

Legislative Analysis



PRIVATE DETECTIVES: REVISE LICENSING ACT

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House Bill 5274 (Substitute H-1)
Sponsor: Rep. Barbara Farrah
Committee: Regulatory Reform

First Analysis (11-27-07)

BRIEF SUMMARY: The bill would revise the Private Detective License Act, and, among other things, rename it the "Professional Investigator Licensure Act".

FISCAL IMPACT: The bill would have an indeterminate fiscal impact on the Judiciary as discussed later in the analysis.

THE APPARENT PROBLEM:

State law currently restricts entry into the profession of a private detective to persons who are or have been, for at least three years, working legally as a private detective in another state; working as an investigative employee for a licensed detective agency; working as an investigator, detective, special agent, or certified police officer of a municipal, state, or federal agency; or persons who have graduated with a baccalaureate degree in the field of police administration.

Some in the investigative industry feel that the law unfairly closes the field to many qualified individuals who do not come from a law enforcement background. For example, as pointed out in testimony before the House Regulatory Reform Committee, a deputy on road patrol for at least three years could be licensed in the state as a professional investigator (PI), but an ex-intelligence officer of the Central Intelligence Agency (CIA) would have a difficult time fitting within the act's parameters for prior experience.

Moreover, the act is outdated. For instance, the term "professional investigator" has replaced "private detective" and the act doesn't regulate those engaged in computer forensics – a growing industry fighting corporate crime, embezzlement, and Internet crimes such as pornography. Without regulation, it has been noted that any computer hacker could claim to be a computer forensic examiner.

It has been suggested that the act be updated, the experience qualifications be expanded to include qualified individuals with other investigative or educational experience, authority granted to law enforcement officials to crack down on unlicensed activity, and expand allowable sanctions for violations of the act's provisions by the state licensing entity.

THE CONTENT OF THE BILL:

The bill would rename the Private Detective License Act as the Professional Investigator Licensure Act, replace references to a "private detective" or "private investigator" with the term "professional investigator," define new terms, revise definitions, prohibit a law enforcement officer from being licensed as a professional investigator, create civil immunity in certain circumstances, create a civil fine for engaging in unlicensed activity, and revise numerous other provisions. Significant revisions include the following:

Definitions.

"Professional investigator" would be defined as a person who, for a fee, reward, or other consideration, engaged in the investigation business.

"Investigation business" would be defined as a business that, for a fee, reward, or other consideration, engaged in business or accepted employment to furnish, or subcontracted or agreed to make, or made an investigation to any of the following:

** Crimes or wrongs done or threatened against the U.S., a state or territory of the U.S., or any other person or legal entity.

**Identity, habits, conduct, business, occupation, honesty, integrity, credibility, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of a person.

** Location, disposition, or recovery of lost or stolen property.

** Cause or responsibility for fires, libels, losses, accidents, or damage or injury to persons or property.

** Securing evidence to be used before a court, board, officer, or investigating committee.

** The prevention, detection, and removal of surreptitiously installed devices designed for eavesdropping or observations, or both (i.e., "bugs").

** The electronic tracking of the location of an individual or motor vehicle for purposes of detection or investigation.

** Computer forensics to be used as evidence before a court, board, officer, or investigating committee. The term "computer forensics" is defined as the collection, investigation, analysis, and scientific examination of data held on, or retrieved from, computers, computer networks, computer storage media, electronic devices, electronic storage media, or electronic networks, or any combination of these.

The current definition of "insurance adjuster" would be revised to also specify that the term includes a person or entity who, when acting for insurance companies solely in the capacity of a claims adjuster, does not perform investigative services including, but not limited to, surveillance activities.

Unlicensed activity. The bill would authorize the Department of Labor and Economic Growth (DLEG), the attorney general, the Michigan State Police (MSP), and local law enforcement agencies to investigate allegations of unlicensed activities. The attorney general or county prosecuting attorney could bring an appropriate civil or criminal action in a court of competent jurisdiction to stop a party from engaging in an activity regulated by the act without a license or an exemption from licensure. An injunction could be issued even if no damages were sustained as a result of the unlicensed activities; issuance of an injunction would not prevent criminal prosecution of unlicensed activities. A court could impose a civil violation fine up to \$25,000. In addition, a person or legal entity alleging unlicensed activity would be immune from tort liability for making the report.

Applicability of the act. Currently, the act excludes numerous entities and individuals from being regulated under the act. In general, the listed exclusions would remain the same except for a few changes. The act currently excludes an officer or employee of the U.S., Michigan, or a state political subdivision while that officer or employee is engaged in the performance of his or her official duties. The bill would retain this exclusion, but would clarify that the exclusion did not pertain to an officer or employee who had been hired or employed under contract by a political subdivision.

Similarly, the act does not regulate an attorney at law in performing his or her duties as an attorney at law; the bill would clarify this provision pertains to an attorney admitted to practice in this state while in the performance of his or her duties as an attorney at law. The bill would also add a new exemption from regulation for a certified public accountant who was acting within the scope of his or her licensed professional practice who did not perform investigative services. This would include, but not be limited to, surveillance activities or other activities outside of the scope of his or her licensed professional practice.

Eligibility for licensure. Under the bill, active law enforcement officers would no longer be able to also be licensed as professional investigators. Beginning January 1, 2008, a law enforcement officer, as defined in the Commission on Law Enforcement Standards Act (MCOLES), or an individual engaged in law enforcement on behalf of the federal government, another state, a territory, or another country, could not be issued any new or renewal license or be employed by, or authorized to operate in any capacity as, a professional investigator in the state of Michigan.

(The MCOLES act defines "law enforcement officer" to include a regularly employed member of a law enforcement agency responsible for the prevention and detection of crime and the enforcement of the general criminal laws of this state; a law enforcement officer of a Michigan Indian Tribal police force; a sergeant at arms of the state legislature; a law enforcement officer of a multicounty metropolitan district; a county prosecuting attorney's investigator sworn and fully empowered by the county sheriff; a Detroit fire arson investigator; and, until December 31, 2007, a law enforcement officer employed by certain school districts.)

This exclusion from licensure would not apply to:

** An individual who holds a volunteer civil defense or emergency services position and acts in a law enforcement or police capacity solely as part of his or her volunteer duties.

** A member of the National Guard or Reserved Armed Forces of the U.S. who acts in a law enforcement or police capacity solely as part of his or her military duties.

** An individual authorized to act with, use, or employ police or other official powers in the case of an emergency or disaster and only for the immediate time of the emergency or disaster.

** A licensed or regulated professional investigator or private security business and its employees who have special police powers that are authorized by law and are limited to those duties performed in their licensed or regulated capacity.

** An individual deputized or empowered by a governmental entity solely for the purpose of serving civil process.

Qualification for licensure. Currently, the act requires DLEG to issue a license to an applicant to conduct business as a professional investigator if it is satisfied that the applicant meets all of the qualifications listed. The bill would make extensive revisions to one of the listed qualifications pertaining to experience. Subdivision (f) of Section 6(1) would be revised (new language added by the bill is underlined) to specify as one qualification that for a period of not less than three years the applicant has been or is any of the following on a full-time basis:

- Lawfully engaged in the professional investigation business as a licensee, registrant, or investigative employee in another state.
- Lawfully engaged in the investigation business as an investigative employee of the holder of a license (instead of certificate of authority) to conduct a professional investigation agency.
- An investigator, detective, special agent, intelligence specialist, parole agent, probation officer, or certified police officer employed by any government executive, military, judicial, or legislative agency, or other public authority engaged in investigative or intelligence activities. (This provision would not include individuals employed by educational or charitable institutions who were solely engaged in academic, consulting, educational, instructional, or research activities.) In the case of the experience requirement under this provision for an applicant demonstrating experience as a probation officer or parole agent, the bill would require the department to consider any application filed on or after January 1, 2005 for eligibility regarding that experience.
- A graduate of an accredited institution of higher education (instead of from an accredited university or college acceptable to DLEG) with a baccalaureate or postgraduate degree in the field of police administration, security management, investigation, law, or criminal justice.
- Lawfully engaged in the investigation business as a full-time proprietary or in-house investigator employed by a business or attorney, or as an investigative reporter employed by a recognized media outlet, acceptable to the department. (This new provision would not include individuals employed by educational or charitable institutions who are solely engaged in academic, consulting, educational, instructional, or research activities.)

- Has posted with DLEG a bond or insurance policy provided for in the act.

Reciprocal agreements. Currently, the act allows a person registered as a private detective or private investigator in another state having a reciprocal agreement with Michigan to engage in activities regulated by the act without being licensed for the limited purpose and for a limited amount of time as necessary to continue an ongoing investigation originating in that state. This provision would be deleted.

Instead, DLEG could enter into reciprocal agreements with other states that had professional investigator qualification laws to allow a professional investigator license or registration to be used by that licensee or registrant within the jurisdiction of either this state or another state. The reciprocal agreement would have to be limited to only allow professional investigators to continue investigations that originated in the investigator's home state and required investigation in another state. The department could enter into a reciprocal agreement if the other state met all of the following conditions:

- Issued a professional investigator ID card with an expiration date printed on the card.
- Was available to verify the license or registration status for law enforcement purposes.
- Had disqualification, suspension, and revocation standards for licenses and registrations.
- Required the applicant for a license or registration as a professional investigator to submit to a criminal history records check pursuant to applicable state and federal law.

In addition, each reciprocal agreement would have to, at a minimum, include the following provisions:

** A requirement that the professional investigator possess a professional investigator license or registration in good standing from his or her home state.

** A requirement that the professional investigator be time-limited to a maximum of 30 days per case while conducting an investigation in this state, or a lesser amount of time if required to comply with the reciprocity statutes or regulations of the other state.

** A requirement that the professional investigator from the other state not solicit any business in this state while conducting investigations here.

Administrative sanctions. Under specified conditions, DLEG may currently suspend or revoke a license issued under the act. The bill would also allow the department to place a limitation on a license, deny a renewal of a license, issue an order of censure, issue an order of probation, and/or impose a requirement that restitution be made.

Miscellaneous provisions. The bill would delete a provision that requires an application, in order to be complete, to be approved by the prosecuting attorney and appropriate local law enforcement agency of the county within which the principal office of the applicant was located. The bill would also delete a provision requiring an application for licensure by a corporation to specify the amount of the corporation's outstanding paid up capital and stock, whether paid in cash or property, and if in property, the nature of the property.

Currently, a licensee may employ as many persons as considered necessary to assist in his or her work and in the conduct of the business. At all times during the employment, the licensee is accountable for the good conduct in the business of each of those employees. The bill would also require the licensee to have direct involvement in the day-to-day activities of each employee.

MCL 338.821 et al.

FISCAL INFORMATION:

The Department of Labor and Economic Growth should not incur any additional expenditures under this bill as it does not create any new responsibilities, and restricts the number of licensees.

As to the fiscal implications on the judiciary, House Bill 5274 allows the court to impose a civil violation fine for the stated violation of engaging in professional investigative activities without being appropriately licensed. However, the bill does not classify the violations as civil infractions and it does not direct the fine revenue to any specific fund. In these cases, it is assumed that a provision of the Management and Budget Act would apply and the fines would be deposited into the state General Fund (MCL 18.1443). (In cases where the statute states the violation is a civil infraction, the civil infraction fine would be dedicated to public libraries.)

Under the bill, the court may assess the defendant with a civil violation fine of not more than \$25,000. This bill would increase the state general fund by an indeterminate amount, depending upon how many new civil violation fines are collected under the bill's provisions.

ARGUMENTS:

For:

The bill would update the statute regulating professional investigators (formerly known as private detectives). For example, many people entering the profession today come from various legal agencies where their work duties included investigations, such as the Central Intelligence Agency. Yet, the licensing act has been interpreted to limit entry into the profession to primarily those with a law enforcement background. Important revisions include opening licensure up to qualified persons with other investigative backgrounds, prohibiting active law enforcement officers from also being licensed as professional investigators, requiring eligible prior experience to have been on a full-time basis, allowing the attorney general and county prosecutors to investigate and prosecute individuals engaging in the activities of a professional investigator without a license, requiring those engaging in computer forensics to be licensed as professional investigators, updating provisions regarding reciprocal agreements (reciprocal agreements allow a PI licensed in another state to continue an investigation in Michigan that began in the PI's home state), and increase the options for license sanctions that DLEG can impose for violations of the act.

Further, graduates of accredited programs in security management, law, and investigation also have skills and training suitable for work as professional investigators. The bill's revisions acknowledge the changing educational and work environment and so would no longer limit a qualifying degree to only police administration or criminal justice.

Against:

It would seem that limiting licensure as a professional investigator only to those with a background in law enforcement is a good thing. After all, it is important that anyone operating as a professional investigator be well versed in what constitutes legal activity and what activities would be out of bounds for non-law enforcement personnel.

Response:

Former law enforcement personnel would still qualify to become licensed professional investigators. However, some feel that the investigative experience and background that can be learned and honed while working in other legal arenas can also serve a person well as a professional investigator. Currently, many experienced and successful individuals who are licensed in other states cannot be licensed under Michigan's restrictive provisions for prior experience. The bill's revisions would simply bring Michigan in line with the qualifying experience used by many other states.

POSITIONS:

The Department of Labor and Economic Growth supports the bill. (11-6-07)

A representative of the Michigan Council of Private Investigators testified in support of the bill. (11-6-07)

P.M. Investigations indicated support for the bill. (11-6-07)

Dalman Investigations indicated support for the bill. (11-6-07)

Dynasty Consultants, LLC indicated support for the bill. (11-6-07)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.