



**House  
Legislative  
Analysis  
Section**

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PER 5-24-90

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**EXEMPT EXPERT WITNESS FR. DETECTIVE ACT**

**House Bill 5752 with committee amendment**  
**First Analysis (5-24-90)**

**Sponsor: Rep. William J. Runco**  
**Committee: Judiciary**

**THE APPARENT PROBLEM:**

Under the Private Detective License Act, a private detective is someone, other than an insurance adjuster, who in exchange for payment makes certain kinds of investigations, such as locating stolen property, determining the cause of a fire, or securing evidence to be used before a court. While federal investigators, collection agencies, philanthropic societies and others are specifically exempted, the act in general requires someone engaging in the business of a private detective to be licensed. Enforcement of the act is the responsibility of the state police.

Difficulties with the act have recently arisen for expert witnesses, people who because of their expertise are called to testify in court. In order to offer an opinion, these people must sometimes examine accident sites, conduct interviews, or perform other investigations. In May 1989, reports surfaced regarding state police investigations of people listed as possible expert witnesses in a directory of products and services for lawyers. It appeared that the state police were preparing to require at least some expert witnesses to be licensed as private detectives. While the license requirement evidently was not to be enforced against a physician making a medical examination for use in court, it was not clear that the act would not be enforced against, for example, an engineer looking into a matter involving an alleged structural defect.

The state police action raised concerns among many in the legal community. They noted the difficulty presented by various private detective license requirements, such as the need for a law enforcement background and a residence in Michigan. The attorney general's opinion was sought, and in Opinion Number 6605, issued November 7, 1989, the attorney general stated that the act, read as a whole, is meant to regulate those who are in the business of carrying on the activities of a private investigator or detective. The attorney general ruled that the act "was not intended to apply to persons who, by virtue of their technical knowledge and experience, have been employed to provide expert testimony in a lawsuit even though, in doing so, they may incidentally perform one or more of the activities described in the Act."

The attorney general's opinion has the force of law until overturned in the courts, and there reportedly has been no state police action under the private detective act against expert witnesses since the attorney general issued his opinion. However, to ensure a more permanent resolution to the problem, it has been proposed that the Private Detective License Act be amended to specifically exempt expert witnesses.

**THE CONTENT OF THE BILL:**

The bill would amend the Private Detective License Act to exempt from the act a person who could be called to testify as an expert witness by a party to a court proceeding, if

the potential witness had to prepare for his or her testimony by gathering information that could be used as evidence.

MCL 338.824

**FISCAL IMPLICATIONS:**

Fiscal information is not available.

**ARGUMENTS:**

**For:**

In specifically exempting expert witnesses from the Private Detective License Act, the bill would echo the attorney general's opinion that expert witnesses are not required to be licensed under the act. The bill would recognize that it does not make sense to require that an expert in biochemistry or structural steel first be licensed as a private detective before conducting the investigation necessary to offer an opinion in court.

**Against:**

The bill's language is broad, exempting anyone who may be called as an expert witness and gathers information in connection with that possibility. This probably would include not only recognized medical and scientific experts, but also professional arson investigators (other than the already-exempted insurance adjusters) and those who "reconstruct" accidents. The bill could make it possible for someone who was conducting private investigations to avoid appropriate licensure by claiming to be an "expert."

**Response:** Someone whose business was that of a private investigator, would, presumably, continue to have to be licensed as a private investigator. In addition, the Michigan Rules of Evidence offer some safeguards against anyone claiming to be an expert. The rules allow a witness qualified as an expert by knowledge, skill, experience, training, or education to testify in the form of an opinion (or otherwise) on a subject where specialized knowledge will help in understanding the evidence or determining a fact at issue. The determination of who may be an expert witness is left to the judge.

**POSITIONS:**

The Department of State Police supports the bill. (5-23-90)

The Michigan Trial Lawyers Association supports the bill. (5-23-90)

H.B. 5752 (5-24-90)