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BILL ANALYSIS



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House Bill 5274 (Substitute S-1 as reported)
Sponsor: Representative Barbara Farrah
House Committee: Regulatory Reform
Senate Committee: Economic Development and Regulatory Reform

Date Completed: 3-25-08

RATIONALE

The Private Detective License Act originally was enacted in 1965. Although the Act was substantially amended in 2002, some have suggested that it needs to be modernized, particularly in regard to the experience or education that qualifies a person for licensure. Currently, a license applicant must have three years of experience as an investigative employee for a detective agency or as an investigator or police officer for a city, county, or state, or the United States; have had his or her own out-of-State private detective practice for at least three year; or have a bachelor's degree in police administration or criminal justice. These criteria are largely unchanged from the Act's original requirements, and do not include such experience as investigative reporting or intelligence work, or education in such areas as computer forensics. Another issue that has been raised involves the ability of law enforcement officers to practice as private investigators. The Act does not apply to an employee or officer of the United States, the State, or a local unit of the State while engaging in his or her professional duties, but it does not address the off-duty activities of a public employee. Some people believe that conflicts of interest can arise when police officers also work as private investigators, and that the Act should limit this practice. Additional suggestions for updating the Act pertain to penalties for unlicensed practice and sanctions for violations by licensees.

CONTENT

The bill would amend the Private Detective License Act to do the following:

- **Replace references to "private detective" or "private investigator" with the term "professional investigator".**
- **Expand the types of experience and degrees that qualify an applicant for licensure.**
- **Prohibit a law enforcement officer from being licensed or working as a professional investigator, except under certain conditions.**
- **Allow the Department of Labor and Economic Growth (DLEG), the Attorney General, the Michigan State Police, and local law enforcement agencies to investigate alleged unlicensed activity.**
- **Allow the Attorney General and county prosecutors to bring an action for an injunction; and prescribe a maximum civil fine of \$25,000 for unlicensed activity.**
- **Revise exceptions to the Act and make additional exceptions for certified public accountants and bail agents.**
- **Specify requirements for reciprocal agreements between DLEG and other states.**
- **Delete a requirement that a license applicant have the approval of a local prosecutor and sheriff.**

- **Expand the administration sanctions that DLEG may impose for violations of the Act.**
- **Require licensees to be directly involved in their employees' activities.**

The bill also would rename the Act the "Professional Investigator Licensure Act".

Professional Investigator

The bill would refer to a "professional investigator" rather than a private detective, private investigator, or detective. "Professional investigator" would mean a person, other than an insurance adjuster who is on salary and employed by an insurance company, who for a fee, reward, or other consideration engages in the investigation business.

"Investigation business" would mean a business that, for a fee, reward, or other consideration, engages in business or accepts employment to furnish, subcontracts or agrees to make, or makes an investigation for the purpose of obtaining information with reference to any of the following:

- Crimes or wrongs done or threatened against the United States or a state or territory of the United States, or any other person or legal entity.
- The identity, habits, conduct, business, occupation, honesty, integrity, credibility, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of a person.
- The location, disposition, or recovery of lost or stolen property.
- The cause or responsibility for fires, libels, losses, accidents, or damage or injury to people 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 and/or observation.
- 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 bill would delete the current definition of "private detective" or "private investigator", which refers to a person who, for a fee, reward, or other consideration, engages in the activities described above, with the exception of the last three (pertaining to surreptitiously installed devices, electronic tracking, and computer forensics). The current definition also contains the same exception for insurance adjusters, as well as an exception for professional engineers.

The Act's definition of "insurance adjuster" includes a person or entity that acts for insurance companies solely in the capacity of a claim adjuster. The bill would refer to a person or entity that acts for insurance companies solely in the capacity of an independent claim adjuster while performing within that capacity.

Unlicensed Activity

The Act requires a person to obtain a license from DLEG before engaging in the business of private detective or investigator for hire, fee, or reward, or advertising his or her business to be that of a detective or detective agency. The bill would refer to "professional investigator" in this provision.

The bill would authorize DLEG, the Attorney General, the Michigan State Police, or a local law enforcement agency, on its own initiative or at the request of any person or legal entity, to investigate allegations of a person or legal entity engaging in activities regulated under the Act without being appropriately licensed or exempt from licensure. The entity conducting the investigation would have to report its findings to the Attorney General and county prosecuting attorney having jurisdiction in the location where the alleged violator was engaged in business.

The Attorney General or county prosecutor could bring an appropriate civil or criminal action in a court of competent jurisdiction to enjoin any person or legal entity that had engaged in or was about to engage in any activity regulated by the Act without being licensed or exempt from licensure. An injunction could be issued without proof of actual damage sustained by anyone. The

issuance of an injunction would not prevent criminal prosecution of a violator.

In addition to issuing an injunction, the court could impose a civil violation fine of up to \$25,000.

A person or legal entity who reported to DLEG, the Attorney General, a local law enforcement agency, or a county prosecutor regarding an allegation of unlicensed activity would be immune from tort liability for making the report.

Exceptions to the Act

The Act lists various people and entities to which it does not apply. These include an officer or employee of the United States, this State, or a political subdivision of this State while the officer or employee is engaged in the performance of his or her official duties. Under the bill, this exception would not apply to a professional investigator hired or employed under contract by the United States, this State, or a political subdivision of this State.

The Act also makes an exception for an attorney at law in performing his or her duties as an attorney at law. The bill would refer to an attorney admitted to practice in this State.

The bill would make an exception to the Act for a certified public accountant acting within the scope of his or her licensed professional practice who did not perform investigative services, including surveillance activities or other activities outside the scope of his or her licensed professional practice.

The bill also would make an exception for a bail agent authorized under the Michigan Penal Code, while performing his or her duties as a bail agent.

Criteria for Licensure

Under the Act's criteria for licensure, a person must have been for at least three years or be any of the following:

- Lawfully engaged in the private detective business on his or her own account in another state.
- Lawfully engaged in the private detective business as an investigative employee of

the holder of a certificate of authority to conduct a detective agency.

- An investigator, detective, special agent, or certified police officer of a city, county, or state government or of the United States government.
- A graduate with a baccalaureate degree in the field of police administration or criminal justice from an accredited university or college acceptable to DLEG.

The bill, instead, would require a person to have been for at least three years or to be on a full-time basis any of the following:

- Lawfully engaged in the professional investigation business as a licensee, registrant, or investigative employee in another state.
- Lawfully engaged in the professional investigation business as an investigative employee of the holder of a license to conduct a professional investigation agency.
- A graduate of an accredited institution of higher education with a baccalaureate or postgraduate degree in the field of police administration, security management, investigation, law, criminal justice, or computer forensics or other computer forensic industry certificated study acceptable to DLEG.
- 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 DLEG.
- An investigator, detective, special agent, intelligence 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.

The last two provisions 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 pertaining to an investigator, detective, special agent, intelligence officer, or police officer employed by a government agency, for an applicant demonstrating experience as a probation officer or parole agent, DLEG

would have to consider any application filed on or after January 1, 2005, for eligibility regarding that experience.

Law Enforcement Officers

Under the bill, beginning July 1, 2010, a law enforcement officer, as that term is defined in the Commission on Law Enforcement Standards Act (MCL 28.602), could not be issued any new or renewal license or be employed and working in an investigative capacity by, or authorized to operate in a capacity as, a professional investigator, unless the officer obtained and produced, in a manner acceptable to DLEG, any of the following:

- Written permission to act as a professional investigator from the current chief of police or county sheriff, or another official having executive authority and responsibility over the law enforcement matters in that jurisdiction if the officer did not work under the authority of a police chief or county sheriff.
- A copy of the collective bargaining agreement of the officer's jurisdiction.
- A copy of the officer's jurisdiction's published policies and procedures allowing off-duty employment.

The policies and procedures would have to include the prohibition of the off-duty use of investigative tools and/or equipment provided exclusively for law enforcement, and indicate that the off-duty employment as a professional investigator was not considered in conflict with employment as a law enforcement officer.

The Department could suspend or revoke the license of a law enforcement officer issued a license under these conditions if he or she violated the policies and procedures governing off-duty employment.

Reciprocity

Currently, a person regulated as a private detective or private investigator in another state having a reciprocal agreement with this State may 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. The bill would delete this provision.

The bill would permit DLEG to enter into reciprocal agreements with other states having 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. A reciprocal agreement would have to be limited to allow professional investigators only to continue investigations that originated in the investigators' 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:

- Issued a professional investigator ID card with an expiration date printed on it.
- 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.

At a minimum, each reciprocal agreement would have to require the following:

- That the professional investigator possess a professional investigator license or registration in good standing from his or her home state.
- That the professional investigator be time-limited to a maximum of 30 days per case while conducting an investigation in Michigan, or less time if required to comply with the reciprocity statutes or regulations of the other state.
- That the professional investigator from the other state not solicit any business in Michigan while conducting investigations in this State.

Administrative Sanctions

The Act authorizes DLEG to suspend or revoke a license if the licensee, the licensee's manager (if an individual), or an officer, director, or partner, or its manager (if not an individual) has violated the Act.

The bill also would permit DLEG to do any of the following regarding a licensee, a licensee's manager, or an officer, director, partner, member, or its manager who violated the Act or a rule or order promulgated or issued under it:

- Place a limitation on a license.
- Deny a renewal of a license.
- Issue an order of censure.
- Issue an order of probation.
- Impose a requirement that restitution be made.

Under the Act, suspension, revocation, or other action against a licensee must be accompanied by notice and an opportunity for a hearing under the Administrative Procedures Act. The bill would require notice and an opportunity for a hearing for suspension, revocation, denial, or other action against a licensee or an applicant for licensure.

Other Provisions

Currently, a license application and investigation are not considered complete until the applicant has received the approval of the prosecuting attorney and the sheriff of the county where the applicant's principal office is to be located. If the office is to be located in a city, township, or village, the approval of the chief of police, instead of the sheriff, may be obtained. The bill would delete these provisions.

Under the Act, if an applicant is a corporation, the application must 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 it. The bill would delete this requirement.

The Act allows a licensee to employ as many people as considered necessary to assist in his or her work and in the conduct of the business. At all times during employment, the licensee must be accountable for the good conduct in the business of each person employed. The bill also would require the licensee to have direct involvement in the day-to-day activities of each employee.

MCL 338.821 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

By broadening the experience and education that can qualify a person for licensure as a professional investigator, the bill would bring the statute up to date and allow otherwise-qualified individuals to become licensed in Michigan. The Senate Economic Development and Regulatory Reform Committee heard testimony from a person who has 22 years of experience as an investigator in the military but cannot obtain a license in Michigan based on that experience, because the military evidently is not considered part of the government. Another person testified that he had been a professional investigator and investigative reporter in other states, but does not qualify for licensure in this State. It is ironic that someone who had a career as an investigator for the United States Senate, or as an intelligence agent for the CIA, cannot get a license in Michigan, but someone with a bachelor's degree in criminal justice or experience as a prison guard can. It also is ironic that someone with a master's degree, but not a bachelor's degree, in criminal justice does not qualify for licensure. The bill would remedy these shortcomings in the Act.

The bill also would recognize a degree in computer forensics as qualifying education, and include computer forensics as part of the investigative business. These changes not only would modernize the Act, but also would regulate those who use the computer as an investigative tool; otherwise, any computer "hacker" could claim to be a computer forensic examiner.

Supporting Argument

The bill's approach to the licensure of law enforcement officers represents a compromise between the current state of the law, which is a grey area, and a blanket prohibition against licensure, which would be unnecessarily broad. Under the Act, licensees are subject to confidentiality requirements and their communication with clients is privileged. It is possible that an off-duty police officer working as a private investigator might uncover evidence of a wrongdoing that he or she otherwise would

be required to report in his or her law enforcement capacity. This sort of conflict will not arise, however, if the client is a third-party, such as an insurance company or an attorney, who is not the subject of an investigation. Another example of a potential conflict involves criminal defense investigations, which many professional investigators conduct. Law enforcement agencies, however, already have specific policies governing officers' off-duty work. An additional concern involves the off-duty use of resources provided by the government—something that also is or can be governed by agency policies.

If the bill prohibited officers from practicing as professional investigators under any circumstances, it not only would eliminate a necessary source of second income for some of them, but also would put their employees out of a job. Instead, the bill would prohibit police officers from obtaining an original or renewal license as a professional investigator *unless* they produced written permission to do so from their police chief, county sheriff, or other law enforcement authority; a copy of their jurisdiction's collective bargaining agreement; or a copy of their jurisdiction's policies allowing off-duty employment that indicated that employment as a professional investigator did not conflict with employment as a law enforcement officer, and did not allow the off-duty use of equipment provided exclusively for law enforcement. The bill's prohibition would not take effect until July 1, 2010, which would "grandfather" existing practitioners to some extent, and give them time to obtain the necessary documentation.

Supporting Argument

The bill would address the unlicensed practice as a professional investigator by authorizing DLEG, the Attorney General, the State Police, and local law enforcement agencies to investigate a person who allegedly was engaging in regulated activities without a license. Although most occupations undoubtedly are afflicted by unlicensed or unregistered practitioners, the risk to consumers may be comparatively higher when someone pries into their personal affairs or conducts surveillance without State oversight. Under the bill, in addition to issuing an injunction, a court could impose a civil fine of up to \$25,000—an amount that would penalize violators

appropriately and could serve as a deterrent.

Supporting Argument

Currently, DLEG may suspend or revoke the license of a licensee, or an officer, director, or manager of a licensee, who violates the Act. The bill would allow the Department to take additional actions, such as ordering probation or requiring restitution. This would give DLEG a broader range of sanctions, and would be consistent with administrative penalties under the Occupational Code.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have no fiscal impact on the Department of Labor and Economic Growth, which currently licenses private detectives. Any civil fines imposed by courts for unlicensed activity would be deposited into the General Fund. The amount of this revenue would depend on the frequency of actions against violators and actual fines imposed by the courts.

Fiscal Analyst: Elizabeth Pratt
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.