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 BILL ANALYSIS

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House Bill 5274 (Substitute H-2 as passed by the House)
Sponsor: Representative Barbara Farrah
House Committee: Regulatory Reform
Senate Committee: Economic Development and Regulatory Reform

Date Completed: 3-19-08

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".
- 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 an additional exception for certified public accountants.
- Revise the licensure criteria regarding experience or a degree.
- Prohibit a law enforcement officer from being licensed or working as a professional investigator, subject to various exceptions.
- 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.
- Specify administration sanctions that DLEG could 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 an exception for insurance adjusters, as well as 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 private detective or investigator for hire, fee, or award, 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, such an officer or employee would not include 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. Under the bill, the attorney would have to be 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.

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 medial 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 January 1, 2008, a law enforcement officer, as that term is defined in the Commission on Law Enforcement Standards Act (MCL 28.602), 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 and working in an investigative capacity by, or authorized to operate in any capacity as, a professional investigator in Michigan. This would not apply to the following:

- An individual who held a volunteer civil defense or emergency services position and acted in a law enforcement or police capacity solely as part of his or her volunteer duties.
- A member of the National Guard or Reserve Armed Forces of the United States who acted 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 had special police powers that were authorized by law and were 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.

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 only professional investigators 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 the 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.

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.

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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.