

1 HB80
2 135429-2
3 By Representative McClendon
4 RFD: Boards, Agencies and Commissions
5 First Read: 07-FEB-12
6 PFD: 01/23/2012

1 ENGROSSED

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3
4 A BILL
5 TO BE ENTITLED
6 AN ACT
7

8 Relating to the regulation and the licensure of
9 private investigators unless licensed by this act; to create
10 the Alabama Private Investigation Board to regulate and
11 license private investigators; to provide for the membership,
12 terms, filling of vacancies, powers, including discipline
13 powers, and duties of the commission; to provide for
14 application and licensure of private investigators; to
15 establish the Alabama Private Investigation Board Fund within
16 the State Treasury and to provide for an appropriation from
17 the fund for fiscal years 2012 and 2013; to provide penalties;
18 and in connection therewith would have as its purpose or
19 effect the requirement of a new or increased expenditure of
20 local funds within the meaning of Amendment 621 of the
21 Constitution of Alabama of 1901, now appearing as Section
22 111.05 of the Official Recompilation of the Constitution of
23 Alabama of 1901, as amended.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. This act shall be known and may be cited
26 as the "Alabama Private Investigators Licensing and Regulatory
27 Act."

1 Section 2. As used in this act, the following terms
2 shall have the following meanings:

3 (1) FELONY. A criminal offense that is defined and
4 punishable under the laws of this state, or an offense
5 committed outside the State of Alabama, which if committed in
6 this state, would be subject to punishment by death or
7 imprisonment in an Alabama penitentiary; a crime in any other
8 state or a crime against the United States which is designated
9 as a felony; or an offense in any other state, territory, or
10 country punishable by imprisonment for a term exceeding one
11 year.

12 (2) PRIVATE INVESTIGATION. The investigation by a
13 person or persons for the purpose of obtaining information
14 with reference to any of the following matters:

15 a. A crime committed or threatened against the
16 United States or any state or territory of the United States,
17 when operating under express written authority of the
18 governmental official responsible for authorizing such
19 investigation.

20 b. The identity, habits, conduct, movements,
21 whereabouts, affiliations, associations, transactions,
22 reputation, or character of any society, person, or group of
23 persons.

24 c. The credibility of witnesses or other persons
25 giving testimony in a criminal or civil action.

26 d. The whereabouts of missing persons, owners of
27 unclaimed property or escheated property, or heirs to estates.

1 (3) PRIVATE INVESTIGATING. The act of any individual
2 or company engaging in the business of obtaining or furnishing
3 information with reference to any of the following:

4 a. A crime committed or threatened against the
5 United States or any state or territory of the United States.

6 b. The identity, habits, conduct, business,
7 occupation, honesty, integrity, credibility, knowledge,
8 trustworthiness, efficiency, loyalty, activity, movement,
9 whereabouts, affiliations, associations, transactions, acts,
10 reputations, or character of any person.

11 c. The location, disposition, or recovery of lost or
12 stolen property.

13 d. The cause or responsibility for fires, losses,
14 accidents, damages, or injuries to persons or to property.

15 (4) PRIVATE INVESTIGATOR. a. A person who performs
16 one or more of the private investigation services or private
17 investigating services defined and regulated by this act.

18 b. A person who, for consideration, advertises as
19 providing or performing private investigation. The term does
20 not include an informant who, on a one time or limited basis,
21 as a result of a unique expertise, ability, or vocation, and
22 who provides information or services while under the direction
23 and control of a licensee of the board, that would otherwise
24 be included in the definition of private investigation.

25 (5) PRIVATE INVESTIGATOR or INDIVIDUAL LICENSEE. A
26 person who is engaged in private investigating and licensed in
27 accordance with this act.

1 Section 3. No person shall hold himself or herself
2 out to the public as a private investigator or use any term,
3 title, or abbreviation that expresses, infers, or implies that
4 the person is licensed as a private investigator unless the
5 person at the time holds a valid license to practice private
6 investigating as provided in this act. All applicants shall
7 pass a criminal background check based on criteria established
8 pursuant to Section 4.

9 Section 4. (a) There is created the Alabama Private
10 Investigation Board. The membership of the board shall reflect
11 the racial, gender, geographic, urban and rural, and economic
12 diversity of the state. The board shall consist of the
13 following members, each of whom shall be a resident of this
14 state, and the licensed private investigator members mentioned
15 herein shall have had a business license as a private
16 investigator for a period of five years appointed as follows:

17 (1) Two persons appointed by the Governor, one who
18 shall have been a licensed private investigator in this state
19 for at least five years prior to the date of their appointment
20 and one who shall be a consumer who will represent the public
21 at large. Initially, the Governor shall appoint two members
22 for a term of three years. Thereafter, successor members shall
23 be appointed for terms of four years each.

24 (2) One person appointed by the Lieutenant Governor,
25 who shall have been a licensed private investigator in this
26 state for at least five years prior to the date of their
27 appointment. Initially, the Lieutenant Governor shall appoint

1 the member for two years. Thereafter, successor members shall
2 be appointed for terms of four years.

3 (3) One person appointed by the Speaker of the House
4 of Representatives who shall have been a licensed private
5 investigator in this state for at least five years prior to
6 the date of appointment. Initially, the Speaker of the House
7 of Representatives shall appoint the members for two years.
8 Thereafter, successor member shall be appointed for terms of
9 four years.

10 (4) One person appointed by the Attorney General who
11 shall have been a licensed private investigator in this state
12 for at least five years prior to the date of appointment.
13 Initially, the Attorney General shall appoint the member for
14 two years. Thereafter, successor members shall be appointed
15 for terms of four years.

16 (5) Two persons appointed by the Alabama Private
17 Investigators Association who shall have been a licensed
18 private investigator in this state for at least five years
19 prior to the date of appointment. Initially, the Alabama
20 Private Investigators Association shall appoint the two
21 members for four years. Thereafter, successor members shall be
22 appointed for terms of four years.

23 (b) Following the initial appointments, all
24 successor members of the board shall be appointed for a term
25 of four years and shall serve until their successors are
26 appointed and qualified by subscribing to the constitutional

1 oath of office, which shall be filed with the Secretary of
2 State.

3 (c) Any vacancy occurring on the board shall be
4 filled by the appointing authority of the vacating member for
5 the unexpired term.

6 (d) No member shall be appointed to succeed himself
7 or herself for more than one full term.

8 (e) The appointing authority may remove a member of
9 the board for misconduct, incompetency, or willful neglect of
10 duty. The board may recommend to the appointing authority
11 suggested administrative actions that may be taken against a
12 board member for missing an excessive amount of meetings.

13 (f) Each member of the board shall receive a
14 certificate of appointment from the Governor before entering
15 upon the discharge of the duties of office.

16 Section 5. (a) The board is declared to be a
17 quasi-judicial body. Absent negligence, wantonness,
18 recklessness, or deliberate misconduct, the members or the
19 employees of the board are granted immunity from civil
20 liability and may not be liable for damages when acting in the
21 performance of their duties under this act.

22 (b) Board members shall be defended by the Attorney
23 General in regard to any litigation filed against them because
24 of the performance of their duties under this act.

25 Section 6. At the initial meeting of the board and
26 every time a new member is appointed to the board the members
27 of the board shall select from among their members a chair and

1 vice chair who shall each have the power to do all things
2 necessary and proper for carrying out the provisions of this
3 act not inconsistent with this act or the laws of this state.

4 Section 7. There is hereby created in the State
5 Treasury for the use of the Alabama Private Investigation
6 Board a fund to be known as the Alabama Private Investigation
7 Board Fund. All application and license fees, penalties,
8 finances, and any other funds collected by the Board under the
9 provisions of this act are to be deposited in this fund and
10 used only to carry out the operations of the Board. No monies
11 shall be withdrawn or expended from the fund for any purpose
12 unless the monies have been appropriated by the Legislature
13 and allocated pursuant to this chapter. Any monies
14 appropriated shall be budgeted and allotted pursuant to the
15 Budget Management Act in accordance with Article 4 (commencing
16 with Section 41-4-80) of Chapter 4 of Title 41, and only in
17 the amounts provided by the Legislature in the general
18 appropriations act or other appropriations act. There is
19 hereby appropriated to the Alabama Private Investigation Board
20 the sum of all monies collected and deposited into the Fund
21 for each of the fiscal years ending September 30, 2012 and
22 September 30, 2013 to be used for the operations of the Board.

23 Section 8. (a) The board may promulgate rules
24 necessary to implement this act and accomplish its objectives
25 subject to the Alabama Administrative Procedure Act.

1 (b) The board may promulgate and establish canons
2 of ethics and minimum acceptable professional standards of
3 practice for licensees within any rules that it adopts.

4 (c) The board shall be entitled to the services of
5 the Attorney General in connection with the affairs of the
6 board.

7 Section 9. (a) The board shall establish regular and
8 special meetings for the purpose of transacting its business.
9 All members of the board shall be notified of the time and
10 place of each meeting pursuant to the Alabama Open Meeting
11 Act.

12 (b) A majority of the board shall constitute a
13 quorum at any meeting of the board.

14 Section 10. (a) Except as otherwise provided in this
15 act, it shall be unlawful for any person to act as a private
16 investigator, without first obtaining a license from the
17 board. For prosecution purposes a violation of this act is
18 classified as a Class A misdemeanor.

19 (b) All licenses issued to private investigators
20 before the enactment of this act shall continue in effect
21 until their expiration. Each holder of a license may
22 thereafter obtain a renewal of the equivalent license under
23 this act by complying with the terms and conditions for
24 renewal prescribed in this act.

25 (c) Each licensee licensed in accordance with this
26 act shall designate a physical address where his or her
27 records are to be kept.

1 Section 11. An application and all information on an
2 application for licensure as a private investigator shall be
3 treated as confidential and shall be filed with the board on
4 forms prescribed by the board. The application shall include
5 all of the following information of the applicant:

6 (1) His or her full name.

7 (2) His or her date and place of birth.

8 (3) All residences during the immediate past five
9 years.

10 (4) All employment or occupations engaged in during
11 the immediate past five years.

12 (5) Three sets of classifiable fingerprints.

13 (6) A list of convictions and pending charges
14 involving a felony or misdemeanor in any jurisdiction.

15 Section 12. (a) Each individual applicant shall meet
16 the following criteria the he or she:

17 (1) Is at least 19 years of age.

18 (2) Is a citizen of the United States or a legally
19 present resident alien.

20 (3) Has not been declared by any court of competent
21 jurisdiction incompetent by reason of mental defect or disease
22 unless a court of competent jurisdiction has subsequently
23 declared the applicant competent.

24 (4) Has not been convicted of a crime of moral
25 turpitude, with the board having the final determination on
26 the interpretation of moral turpitude.

27 (5) Has not been convicted of a felony crime.

1 (6) Has passed an examination to be administered
2 twice annually by the board designed to measure knowledge and
3 competence in the investigation field.

4 (b) A study guide shall be provided to any applicant
5 seeking to obtain an initial or renewal license under this
6 act.

7 (c) Any investigator currently licensed in the state
8 of Alabama shall not have to meet the initial application
9 requirements of this act, but shall be issued a license upon
10 application.

11 Section 13. (a) Upon receipt of an application for a
12 license pursuant to this act, nonrefundable, nonprorateable,
13 application fees shall be submitted for the following
14 services:

15 (1) A request that the Alabama Bureau of
16 Investigation compare the fingerprints submitted with the
17 application to fingerprints filed with the Alabama Bureau of
18 Investigation. On subsequent applications, the Alabama Bureau
19 of Investigation, at the request of the board, shall review
20 its criminal history files based upon the name, date of birth,
21 sex, race, and Social Security number of an applicant whose
22 fingerprints have previously been submitted to the bureau for
23 any new information since the date of the fingerprint
24 comparison, and shall furnish any information thereby derived
25 to the board.

26 (2) A request to submit the fingerprints to the
27 Federal Bureau of Investigation for a search of its files to

1 determine whether the individuals fingerprinted have any
2 recorded convictions.

3 (b) After the approval of the application by the
4 board, the board shall issue a license in a form prescribed by
5 the board to qualified applicants upon its receipt of a
6 nonrefundable, nonprorateable, private investigator license
7 fee as set by the board.

8 (c) (1) If an application for a license is denied,
9 the board shall notify the applicant in writing and shall set
10 forth the grounds for denial. If the grounds are subject to
11 correction by the applicant, the notice shall so state and
12 specify a reasonable period of time within which the applicant
13 shall make the required correction.

14 (2) The applicant shall be allowed to submit reason
15 for reconsideration to the board within 30 days from the date
16 of receipt of denial.

17 (d) The board shall issue an 8x10 license to all
18 licensees which must be displayed on a wall of the workplace
19 of the licensee. This license shall be deemed property of the
20 State of Alabama and subject to forfeiture to the state upon
21 revocation.

22 Section 14. (a) The board shall issue every private
23 investigator licensee an identification card that shall
24 contain the following information of the licensee:

25 (1) Name.

26 (2) Photograph.

27 (3) Physical characteristics.

1 (4) Private investigators license number.

2 (5) Expiration date of license.

3 (b) An identification card, which shall be issued in
4 a credit card size and shall be permanently laminated.

5 (c) The identification card shall be carried on the
6 person of the licensee when engaged in the activities of the
7 licensee.

8 Section 15. Making a false statement to the board
9 shall be punishable by a civil penalty not to exceed one
10 thousand dollars (\$1,000) and assessment of the maximum
11 application fee.

12 Section 16. Upon receipt of the application and
13 applicable fees, the board shall conduct an investigation to
14 determine whether the statements made in the application are
15 true.

16 Section 17. (a) All licenses issued or renewed under
17 this act shall be valid for a period of two years from the
18 date of issuance. The board shall provide each licensee with a
19 renewal application 60 days prior to the expiration of the
20 license.

21 (b) Each application for renewal shall be reviewed
22 for criminal convictions and civil fraud findings.

23 (c) An administrative monetary penalty prescribed by
24 the board shall be assessed on any renewal application
25 postmarked after the expiration date of the license.

1 (d) No renewal application may be accepted more than
2 30 days after the expiration date of the license or after
3 September 30 of the calendar year.

4 Section 18. (a) The board may suspend, revoke, or
5 refuse to issue or renew any license issued by it upon finding
6 that the holder or applicant has committed any of the
7 following acts:

8 (1) A violation of this act or any rule promulgated
9 under this act.

10 (2) Fraud, deceit, or misrepresentation regarding an
11 application or license.

12 (3) Knowingly and willfully making a material
13 misstatement in connection with an application for a license
14 or renewal.

15 (4) A conviction by a court of competent
16 jurisdiction of a felony crime.

17 (5) A conviction by a court of competent
18 jurisdiction of a misdemeanor if the board finds that the
19 conviction reflects unfavorably on the fitness for the
20 license.

21 (6) The commission of any act which would have been
22 cause for refusal to issue the license or registration card
23 had it existed and been known to the board at the time of
24 issuance.

25 (b) In addition to, or in lieu of, any other lawful
26 disciplinary action under this section, the board may assess a

1 civil penalty not exceeding two thousand dollars (\$2,000) for
2 a violation of this act.

3 (c) A license may be suspended for the remaining
4 license period and renewed during any period in which the
5 license was suspended.

6 Section 19. (a) No licensee or applicant shall be
7 required to obtain any authorization, permit, or license from,
8 or pay any other fee or post a bond in, any municipality,
9 county, or other political subdivision of this state to engage
10 in any activity regulated under this act.

11 (b) Notwithstanding subsection (a), a municipality,
12 county, or other political subdivision of this state may
13 impose a bona fide occupational tax on a licensee.

14 Section 20. The board may negotiate and enter into
15 reciprocal agreements with the appropriate officials in other
16 states to permit licensed investigators who meet or exceed the
17 qualifications established in this act to operate across state
18 lines under mutually acceptable terms.

19 Section 21. The board shall provide a copy of this
20 act and any rules promulgated under this act to the following:

21 (1) Each licensee, every two years.

22 (2) Any other person, upon request, for a reasonable
23 fee established by the board.

24 Section 22. The following acts when committed by an
25 individual licensed as a private investigator in Alabama shall
26 constitute a violation punishable as a Class A misdemeanor:

1 (1) To knowingly make a material misrepresentation
2 as to the ability of the individual to perform the
3 investigation required by a potential client in order to
4 obtain employment.

5 (2) To make unsubstantiated monetary charges to a
6 client for services not rendered or transportation not
7 utilized.

8 (3) To knowingly make a false report to a client in
9 relation to the investigation performed for a client.

10 (4) To continue an investigation for a client when
11 it becomes obvious to the investigator that a successful
12 completion of an investigation is unlikely without first
13 advising the client and obtaining the approval of the client
14 for continuation of the investigation.

15 (5) To reveal information obtained for a client
16 during an investigation to another individual except as
17 required by law.

18 (6) Persons licensed pursuant to this act are
19 required to report any suspected instances of child abuse or
20 neglect and must report their suspicions to local law
21 enforcement or the Department of Human Resources, or both.

22 Section 23. The Administrative Procedure Act shall
23 govern all matters and procedures respecting the hearing and
24 judicial overview of any contested case.

25 Section 24. This act does not apply to the
26 following:

1 (1) An employee of any business or entity that is
2 not primarily engaged in the business of private
3 investigations or private investigating when that employee is
4 performing duties related to his or her employment.

5 (2) An investigation of the internal affairs of a
6 private business entity investigating a current or prospective
7 employee.

8 (3) An employee of any business or entity that is
9 not primarily engaged in the business of private
10 investigations or private investigating when that employee is
11 working under a contract for his or her services that his or
12 her employer signed with a third party.

13 (4) Any person or professional (including without
14 limitation attorneys providing legal services) who is not
15 primarily engaged in the business of private investigations or
16 private investigating, but who in conjunction with his or her
17 business or profession may occasionally perform private
18 investigations or private investigating.

19 (5) Any business or entity that is not primarily
20 engaged in the business of private investigations or private
21 investigating.

22 (6) A consumer reporting agency as defined by the
23 Federal Fair Credit Reporting Act.

24 (7) Any certified public accountant authorized to
25 engage in the practice of public accountancy in this state or
26 any entity licensed or otherwise permitted to engage in the

1 practice of public accountancy in this state or the affiliated
2 entities thereof.

3 (8)a. An attorney-at-law in good standing and
4 licensed to practice law;

5 b. An employee of a single attorney or single law
6 firm who is acting within the employee's scope of employment
7 for the attorney or law firm; or

8 c. A consultant or forensic scientist when the
9 person is retained by an attorney or appointed by a court to
10 serve as an expert witness or to make tests, conduct
11 experiments, draw conclusions, render opinions or make
12 diagnoses, where those services require the use of training or
13 experience in a technical, scientific, or social science
14 field.

15 (9) Any individual engaged in any of the following:

16 a. Computer or digital forensic services; or

17 b. The acquisition, review, or analysis of digital
18 or computer-based information in order to obtain or furnish
19 information for evidentiary or other purposes or to provide
20 expert testimony before any court, board, officer, or
21 investigating committee; or

22 c. Network or system vulnerability testing,
23 including network scans and risk assessment and analysis of
24 computers connected to a network.

25 Section 25. (a) There is created within the board a
26 division of investigation that shall be its official
27 investigative agency.

1 (b) Each licensee shall provide to the investigative
2 staff all records that pertain to the exact nature of the
3 complaint under investigation and upon issuance of a subpoena.

4 (c) The board or any executive director of the board
5 may subpoena those persons or documents necessary to any
6 investigation undertaken under this act if other means
7 including, but not limited to, notification by return receipt
8 registered United States mail, have not produced the desired
9 results.

10 Section 26. (a) Each licensee shall complete eight
11 hours of continuing professional education acceptable to the
12 board in each calendar year.

13 (b) The board shall make every effort to ensure at
14 least one seminar per year will be held in each congressional
15 district of the state providing an opportunity to fulfill the
16 continuing professional education requirements of this
17 section, which shall include at least one hour per year on
18 ethics.

19 (c) The board shall promulgate rules necessary to
20 carry out this section.

21 Section 27. (a) Any person offering private
22 investigator training must first be certified by the board.
23 The board shall ensure that the instructors employed by the
24 training provider possess both the experience and academic
25 credentials to ensure that the curriculum and instruction will
26 be beneficial to those seeking to enter the profession. In

1 order to qualify as a certified trainer or instructor, or
2 both, the trainer shall meet the following criteria:

3 (1) He or she is 19 years of age.

4 (2) He or she has had at least three years'
5 experience satisfactory to the board with an investigative
6 company or proprietary entity or with any federal, United
7 States Military, state, county, or municipal law enforcement
8 agency and relating to the block of instruction.

9 (3) He or she is personally qualified to conduct the
10 training required by this act and is certified by the board
11 which shall establish standards for the instruction process.

12 (b) A certified trainer, in his or her discretion,
13 may instruct personally or use a combination of personal,
14 instruction, audio, and visual training aids.

15 (c) To assist in the implementation of a training
16 program, the certified trainer may use as an assistant trainer
17 one who meets the following requirements:

18 (1) He or she is 19 years of age.

19 (2) He or she has had at least one year of
20 experience with an investigative company or any United States
21 Military, state, county, or municipal law enforcement agency.

22 (d) A certified trainer may be an employee of a
23 private investigative or propriety agency or, if not, employed
24 by an agency as a company under this act.

25 (e) The certified trainer shall certify that he or
26 she has successfully completed the training and shall submit
27 the certification to the board.

1 (f) The training program, fees, and requirements
2 shall be established by rules promulgated by the board.

3 Section 28. No action taken under this act shall
4 preclude prosecution under any other law of this state.

5 Section 29. Although this bill would have as its
6 purpose or effect the requirement of a new or increased
7 expenditure of local funds, the bill is excluded from further
8 requirements and application under Amendment 621, now
9 appearing as Section 111.05 of the Official Recompilation of
10 the Constitution of Alabama of 1901, as amended, because the
11 bill defines a new crime or amends the definition of an
12 existing crime.

13 Section 30. The Alabama Private Investigation Board
14 is subject to the provisions of the Alabama Sunset Law of
15 1981. The board shall automatically terminate on October 1,
16 2015 and every four years thereafter, unless a bill is passed
17 that it be continued, modified or reestablished.

18 Section 31. This act shall become effective on the
19 first day of the third month following its passage and
20 approval by the Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Boards, Agencies
and Commissions..... 07-FEB-12

Read for the second time and placed
on the calendar 3 amendments 08-FEB-12

Read for the third time and passed
as amended..... 23-FEB-12

Yeas 91, Nays 0, Abstains 0

Greg Pappas
Clerk