

1 SB172
2 145601-9
3 By Senators Holtzclaw, Fielding, Waggoner, Scofield, Whatley,
4 Reed, Allen, Orr, Taylor, McGill, Singleton, Beason, Keahey,
5 Blackwell, and Smitherman
6 RFD: Governmental Affairs
7 First Read: 07-FEB-13

1 SB172

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4 ENROLLED, An Act,

5 Relating to the regulation of private investigation;
6 to create the Alabama Private Investigation Board to regulate
7 and license the practice of private investigation; to provide
8 for the membership, terms, filling of vacancies, powers,
9 including disciplinary powers, and duties of the board; to
10 provide for the application for and licensure of private
11 investigators; to establish the Alabama Private Investigation
12 Board Fund within the State Treasury and to provide for an
13 appropriation from the fund for fiscal years 2013 and 2014; to
14 provide penalties; and in connection therewith would have as
15 its purpose or effect the requirement of a new or increased
16 expenditure of local funds within the meaning of Amendment 621
17 of the Constitution of Alabama of 1901, now appearing as
18 Section 111.05 of the Official Recompilation of the
19 Constitution of Alabama of 1901, as amended.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. This act shall be known and may be cited
22 as the "Alabama Private Investigation Regulatory Act."

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

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

9 (2) PRIVATE INVESTIGATION. The compensated act of
10 any individual or company engaging in the business of
11 obtaining or furnishing information with reference to any of
12 the following:

13 a. A crime committed or threatened against the
14 United States or any state or territory of the United States.

15 b. The identity, habits, conduct, business,
16 occupation, honesty, integrity, credibility, including, but
17 not limited to, the credibility of a person giving testimony
18 in a criminal or civil proceeding, knowledge, trustworthiness,
19 efficiency, loyalty, activity, movement, whereabouts,
20 affiliations, associations, transactions, acts, reputations,
21 or character of any person.

22 c. The location, disposition, or recovery of lost or
23 stolen property.

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

1 (3) PRIVATE INVESTIGATOR. a. A person who, for
2 compensation, performs one or more of the private
3 investigation services defined and regulated by this act.

4 b. A person who, for consideration, advertises as
5 providing or performing private investigation. The term does
6 not include an informant who, on a one time or limited basis,
7 as a result of a unique expertise, ability, or vocation, and
8 who provides information or services while under the direction
9 and control of a licensee of the board, that would otherwise
10 be included in the definition of private investigation.

11 (4) PRIVATE INVESTIGATOR. A person who is engaged in
12 private investigation as defined herein and who is licensed in
13 accordance with this act.

14 Section 3. No person shall practice private
15 investigation or hold himself or herself out to the public as
16 a private investigator or use any term, title, or abbreviation
17 that expresses, infers, or implies that the person is licensed
18 as a private investigator unless the person at the time holds
19 a valid license to practice private investigation as provided
20 in this act. All applicants shall pass a criminal background
21 check based on criteria established pursuant to Section 4.

22 Section 4. (a) There is created the Alabama Private
23 Investigation Board. The membership of the board shall reflect
24 the racial, gender, geographic, urban and rural, and economic
25 diversity of the state.

1 (b) Private investigator members provided for herein
2 shall have had five years of experience as an investigator
3 prior to his or her appointment. After five years following
4 the effective date of this act, private investigator members
5 who are appointed to the board shall have been licensed
6 pursuant to this act as a private investigator for a period of
7 at least five years prior to his or her appointment.

8 (c) The following members shall be appointed to the
9 board:

10 (1) Three persons appointed by the Governor, two of
11 whom shall be private investigators in this state and one of
12 whom shall be a consumer who will represent the public at
13 large. The Governor shall appoint the three members to initial
14 terms of three years. Thereafter, successor members shall be
15 appointed for terms of four years each.

16 (2) One person appointed by the Lieutenant Governor,
17 who must be a private investigator. The Lieutenant Governor
18 shall appoint the member for an initial term of two years.
19 Thereafter, successor members shall be appointed for terms of
20 four years.

21 (3) One person appointed by the Speaker of the House
22 of Representatives who must be a private investigator. The
23 Speaker of the House of Representatives shall appoint the
24 member for an initial term of two years. Thereafter, successor
25 members shall be appointed for terms of four years.

1 (4) One person appointed by the Attorney General who
2 must be a private investigator. The Attorney General shall
3 appoint the member for an initial term of two years.
4 Thereafter, successor members shall be appointed for terms of
5 four years.

6 (5) One person appointed by the Alabama State Bar
7 Association who must be a member in good standing for an
8 initial term of four years. Thereafter, successor members
9 shall be appointed for terms of four years.

10 (6) One person appointed by the Alabama Private
11 Investigators Association who must be a private investigator.
12 The association shall appoint the member for an initial term
13 of four years. Thereafter, successor members shall be
14 appointed for terms of four years.

15 (d) Following the initial appointments, all
16 successor members of the board shall be appointed for a term
17 of four years and shall serve until their successors are
18 appointed and qualified by subscribing to the constitutional
19 oath of office, which shall be filed with the Secretary of
20 State.

21 (e) Any vacancy occurring on the board shall be
22 filled by the appointing authority of the vacating member for
23 the unexpired term.

24 (f) No member may be appointed to succeed himself or
25 herself for more than one full term.

1 (g) The appointing authority may remove a member of
2 the board for misconduct, incompetency, or willful neglect of
3 duty. The board may recommend to the appointing authority
4 suggested administrative actions that may be taken against a
5 board member for missing an excessive amount of meetings.

6 (h) Each member of the board shall receive a
7 certificate of appointment from the Governor before entering
8 upon the discharge of the duties of office.

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

15 (b) Board members and employees shall be defended by
16 the Attorney General in regard to any criminal or civil
17 litigation filed against them based on the performance of
18 their official duties under this act.

19 Section 6. At the initial meeting of the board and
20 each time a new member is appointed to the board, the members
21 of the board shall select from among their members a chair to
22 preside over meetings of the board and a vice chair to preside
23 in the absence of the chair.

24 Section 7. There is hereby created in the State
25 Treasury for the use of the Alabama Private Investigation

1 Board a fund to be known as the Alabama Private Investigation
2 Board Fund. All application and license fees, penalties,
3 fines, and any other funds collected by the board under the
4 provisions of this act are to be deposited in this fund and
5 used only to carry out the operations of the board. No monies
6 shall be withdrawn or expended from the fund for any purpose
7 unless the monies have been appropriated by the Legislature
8 and allocated pursuant to this chapter. Any monies
9 appropriated shall be budgeted and allotted pursuant to the
10 Budget Management Act in accordance with Article 4 (commencing
11 with Section 41-4-80) of Chapter 4 of Title 41, Code of
12 Alabama 1975, and only in the amounts provided by the
13 Legislature in the general appropriations act or other
14 appropriations act. There is hereby appropriated to the
15 Alabama Private Investigation Board the sum of all monies
16 collected and deposited into the Alabama Private Investigation
17 Board Fund for each of the fiscal years ending September 30,
18 2013, and September 30, 2014, to be used for the operations of
19 the board.

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

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

1 (c) The board may hire personnel necessary or as
2 advisable to carry out the purposes and provisions of this
3 article. With the exception of the Executive Director, all
4 personnel shall be subject to the provisions of the state
5 Merit System Act.

6 (d) The Attorney General shall provide legal
7 services to the board and board employees in connection with
8 official duties and actions of the board.

9 Section 9. (a) The board shall establish regular and
10 special meetings for the purpose of transacting its business
11 as provided by rules promulgated by the board. Notice of board
12 meetings and meetings of the board shall comply with the
13 Alabama Open Meetings Act.

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

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

21 (b) Each person licensed in accordance with this act
22 shall designate to the board a physical address where his or
23 her records are to be kept.

24 Section 11. An application and all information on an
25 application for licensure as a private investigator shall be

1 treated as confidential and shall be filed with the board on
2 forms prescribed by the board. The application shall include
3 all of the following information of the applicant:

4 (1) His or her full name.

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

6 (3) All residences during the immediate past five
7 years.

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

10 (5) Three sets of classifiable fingerprints.

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

13 Section 12. (a) Each individual applicant shall meet
14 the following criteria that he or she:

15 (1) Is at least 21 years of age.

16 (2) Has not been declared by any court of competent
17 jurisdiction incompetent by reason of mental defect or disease
18 unless a court of competent jurisdiction has subsequently
19 declared the applicant competent.

20 (3) Has not been convicted of a crime of moral
21 turpitude, with the board having the final determination on
22 the interpretation of moral turpitude.

23 (4) Has not been convicted of a felony crime.

1 (5) 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 holding a business
8 license in the state of Alabama shall not have to meet the
9 initial application requirements of this act, but shall be
10 issued a license pursuant to this act upon 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 to the board by the
14 applicant for the following 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.

1 (2) A request to submit the fingerprints to the
2 Federal Bureau of Investigation for a search of its files to
3 determine whether an individual fingerprinted has any recorded
4 convictions.

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

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

16 (2) The applicant may submit an application for
17 reconsideration to the board within 30 days from the date of
18 receipt of denial.

19 (d) The board shall issue a license to all licensees
20 that shall be at least 8"x10" in size and shall be displayed
21 on a wall of the workplace of the licensee. This license shall
22 be deemed property of the State of Alabama and subject to
23 forfeiture to the state upon revocation.

24 Section 14. (a) The board shall issue to every
25 private investigator licensee an identification card, which

1 shall be issued in credit card size, be permanently laminated,
2 and contain the following information of the licensee:

3 (1) Name.

4 (2) Photograph.

5 (3) Physical characteristics.

6 (4) Private investigator's license number.

7 (5) Expiration date of license.

8 (b) The identification card shall be carried on the
9 person of the licensee when engaged in the activities of the
10 licensee.

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

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

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

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

1 (c) An administrative late fee not exceeding two
2 hundred dollars (\$200) as prescribed by the board shall be
3 assessed on any renewal application postmarked after the
4 expiration date of the license.

5 (d) No renewal application may be accepted more than
6 30 days after the expiration date of the license.

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

11 (1) A violation of this act or any rule promulgated
12 pursuant to this act.

13 (2) Fraud, deceit, or misrepresentation regarding an
14 application or license.

15 (3) Knowingly and willfully making a material
16 misstatement in connection with an application for a license
17 or renewal.

18 (4) A conviction by a court of competent
19 jurisdiction of a felony.

20 (5) A conviction by a court of competent
21 jurisdiction of a Class A misdemeanor, if the board finds that
22 the conviction reflects unfavorably on the fitness of the
23 person for the license.

24 (6) The commission of any act which would have been
25 cause for refusal to issue the license or registration card

1 had it existed and been known to the board at the time of
2 issuance.

3 (b) In addition to, or in lieu of, any other lawful
4 disciplinary action under this section, the board may assess a
5 civil penalty not exceeding two thousand dollars (\$2,000) for
6 each violation.

7 (c) A license may be suspended for the remaining
8 license period and renewed during any period in which the
9 license was suspended.

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

15 (b) Notwithstanding subsection (a), a municipality,
16 county, or other political subdivision of this state may
17 impose a bona fide occupational tax or business license fee on
18 a licensee.

19 Section 20. The board may negotiate and enter into
20 reciprocal agreements with the appropriate officials in other
21 states to permit licensed investigators who meet or exceed the
22 qualifications established in this act to operate in
23 reciprocal states under mutually acceptable terms.

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

1 (1) Each licensee, upon issuance of an original
2 license, and every two years thereafter upon license renewal.

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

5 Section 22. (a) The following acts when committed by
6 an individual licensed as a private investigator in Alabama
7 shall constitute a violation punishable as a Class A
8 misdemeanor:

9 (1) To knowingly make a material misrepresentation
10 as to the ability of the individual to perform the
11 investigation required by a potential client in order to
12 obtain employment.

13 (2) To make unsubstantiated monetary charges to a
14 client for services not rendered or transportation not
15 utilized.

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

18 (4) To continue an investigation for a client when
19 it becomes obvious to the investigator that a successful
20 completion of an investigation is unlikely without first
21 advising the client and obtaining the approval of the client
22 for continuation of the investigation.

23 (5) To reveal information obtained for a client
24 during an investigation to another individual except as
25 required by law.

1 (b) Persons licensed pursuant to this act shall
2 report any suspected instances of child abuse or neglect to a
3 local law enforcement agency or the Department of Human
4 Resources, or both.

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

8 Section 24. This act does not apply to the
9 following:

10 (1) An employee of any business or entity that is
11 not primarily engaged in the business of private investigation
12 when that employee is performing duties related to his or her
13 employment.

14 (2) An investigation of the internal affairs of a
15 private business entity investigating a current or prospective
16 employee.

17 (3) An employee of any business or entity that is
18 not primarily engaged in the business of private investigation
19 when that employee is working under a contract for his or her
20 services that his or her employer signed with a third party.

21 (4) Any person or professional, including without
22 limitation an attorney providing legal services, who is not
23 primarily engaged in the business of private investigation,
24 but who in conjunction with his or her business or profession
25 may occasionally perform private investigation services.

1 (5) Any business or entity that is not primarily
2 engaged in the business of private investigation.

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

5 (7) Any certified public accountant authorized to
6 engage in the practice of public accountancy in this state or
7 any entity licensed or otherwise permitted to engage in the
8 practice of public accountancy in this state or the affiliated
9 entities thereof.

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

12 b. An employee of a single attorney or single law
13 firm who is acting within the employee's scope of employment
14 for the attorney or law firm; or

15 c. A consultant, accident reconstructionist, or
16 forensic scientist when the person is retained by an attorney,
17 insurance company representative, or appointed by a court to
18 serve as an expert witness or to investigate, or to make
19 tests, conduct experiments, draw conclusions, render opinions
20 or make diagnoses, where those services require the use of
21 training or experience in a technical, scientific, or social
22 science field.

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

24 a. Computer or digital forensic services.

1 b. The acquisition, review, or analysis of digital
2 or computer-based information in order to obtain or furnish
3 information for evidentiary or other purposes or to provide
4 expert testimony before any court, board, officer, or
5 investigating committee.

6 c. Network or system vulnerability testing,
7 including network scans and risk assessment and analysis of
8 computers connected to a network.

9 Section 25. (a) There is created within the board a
10 Division of Investigation that shall be the board's official
11 investigative agency.

12 (b) Each licensee shall provide to the investigative
13 division staff all records that pertain to the exact nature of
14 the complaint under investigation and upon the issuance of a
15 subpoena.

16 (c) The board or an executive director of the board
17 may subpoena those persons or documents necessary to any
18 investigation undertaken under this act if other means
19 including, but not limited to, notification by return receipt
20 registered United States mail, have not produced the desired
21 results. Any subpoena issued shall be limited to
22 investigations by the board of its members and shall not
23 extend to any other matter.

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

4 (b) The board shall make every effort to ensure at
5 least one seminar per year will be held in each congressional
6 district of the state providing an opportunity to fulfill the
7 continuing professional education requirements of this
8 section, which shall include at least one hour per year on
9 ethics.

10 (c) The board shall promulgate rules necessary to
11 carry out this section.

12 Section 27. (a) Any person offering private
13 investigation training must first be certified by the board.
14 The board shall ensure that the instructors employed by the
15 training provider possess both the experience and academic
16 credentials to ensure that the curriculum and instruction will
17 be beneficial to those seeking to enter the profession. In
18 order to qualify as a certified trainer or instructor, or
19 both, the trainer shall meet the following criteria that he or
20 she:

21 (1) Is 21 years of age.

22 (2) Has had at least three years' experience
23 satisfactory to the board with an investigative company or
24 proprietary entity or with any federal, United States

1 Military, state, county, or municipal law enforcement agency
2 and relating to the block of instruction.

3 (3) Is personally qualified to conduct the training
4 required by this act and is certified by the board which shall
5 establish standards for the instruction process.

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

9 (c) To assist in the implementation of a training
10 program, the certified trainer may use as an assistant trainer
11 any person who meets each of the following requirements that
12 the assistant:

13 (1) Is 19 years of age.

14 (2) Has had at least one year of experience with an
15 investigative company or any United States Military, state,
16 county, or municipal law enforcement agency.

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

20 (e) The certified trainer shall certify that he or
21 she has successfully completed the training and shall submit
22 the certification to the board.

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

1 Section 28. No criminal or civil action taken under
2 this act precludes a prosecution or action under any other law
3 of this state.

4 Section 29. The Alabama Private Investigation Board
5 is subject to the provisions of the Alabama Sunset Law of
6 1981. The board shall automatically terminate on October 1,
7 2016, and every four years thereafter, unless a bill is passed
8 that it be continued, modified, or reestablished.

9 Section 30. Although this bill would have as its
10 purpose or effect the requirement of a new or increased
11 expenditure of local funds, the bill is excluded from further
12 requirements and application under Amendment 621, now
13 appearing as Section 111.05 of the Official Recompilation of
14 the Constitution of Alabama of 1901, as amended, because the
15 bill defines a new crime or amends the definition of an
16 existing crime.

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

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB172

Senate 11-APR-13

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris
Secretary

House of Representatives
Amended and passed 07-MAY-13

Senate concurred in House amendment 20-MAY-13

By: Senator Holtzclaw