

1 HB80
2 135429-1
3 By Representative McClendon
4 RFD: Boards, Agencies and Commissions
5 First Read: 07-FEB-12
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8 SYNOPSIS: Currently, the practice of private
9 investigation is not regulated or licensed by the
10 state.

11 This bill would regulate and license the
12 practice of private investigation by private
13 investigators.

14 This bill would define terms; create the
15 Alabama Private Investigation Board and provide for
16 its membership, meetings, officers, powers, and
17 duties; and would prohibit persons acting as a
18 private investigator without a license, subject to
19 criminal punishment as a Class A misdemeanor.

20 Amendment 621 of the Constitution of Alabama
21 of 1901, now appearing as Section 111.05 of the
22 Official Recompilation of the Constitution of
23 Alabama of 1901, as amended, prohibits a general
24 law whose purpose or effect would be to require a
25 new or increased expenditure of local funds from
26 becoming effective with regard to a local
27 governmental entity without enactment by a 2/3 vote

1 unless: it comes within one of a number of
2 specified exceptions; it is approved by the
3 affected entity; or the Legislature appropriates
4 funds, or provides a local source of revenue, to
5 the entity for the purpose.

6 The purpose or effect of this bill would be
7 to require a new or increased expenditure of local
8 funds within the meaning of the amendment. However,
9 the bill does not require approval of a local
10 governmental entity or enactment by a 2/3 vote to
11 become effective because it comes within one of the
12 specified exceptions contained in the amendment.

13
14 A BILL
15 TO BE ENTITLED
16 AN ACT

17
18 Relating to the regulation and the licensure of
19 private investigators unless licensed by this act; to create
20 the Alabama Private Investigation Board to regulate and
21 license private investigators; to provide for the membership,
22 terms, filling of vacancies, powers, including discipline
23 powers, and duties of the commission; to provide for
24 application and licensure of private investigators; to provide
25 penalties; and in connection therewith would have as its
26 purpose or effect the requirement of a new or increased
27 expenditure of local funds within the meaning of Amendment 621

1 of the Constitution of Alabama of 1901, now appearing as
2 Section 111.05 of the Official ReCompilation of the
3 Constitution of Alabama of 1901, as amended.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. This act shall be known and may be cited
6 as the "Alabama Private Investigators Licensing and Regulatory
7 Act."

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

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

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

22 a. A crime committed or threatened against the
23 United States or any state or territory of the United States,
24 when operating under express written authority of the
25 governmental official responsible for authorizing such
26 investigation.

1 b. The identity, habits, conduct, movements,
2 whereabouts, affiliations, associations, transactions,
3 reputation, or character of any society, person, or group of
4 persons.

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

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

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

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

14 b. The identity, habits, conduct, business,
15 occupation, honesty, integrity, credibility, knowledge,
16 trustworthiness, efficiency, loyalty, activity, movement,
17 whereabouts, affiliations, associations, transactions, acts,
18 reputations, or character of any person.

19 c. The location, disposition, or recovery of lost or
20 stolen property.

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

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

26 b. A person who, for consideration, advertises as
27 providing or performing private investigation. The term does

1 not include an informant who, on a one time or limited basis,
2 as a result of a unique expertise, ability, or vocation, and
3 who provides information or services while under the direction
4 and control of a licensee of the board, that would otherwise
5 be included in the definition of private investigation.

6 (5) PRIVATE INVESTIGATOR or INDIVIDUAL LICENSEE. A
7 person who is engaged in private investigating and licensed in
8 accordance with this act.

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

17 Section 4. (a) There is created the Alabama Private
18 Investigation Board. The membership of the board shall reflect
19 the racial, gender, geographic, urban and rural, and economic
20 diversity of the state. The board shall consist of the
21 following members, each of whom shall be a resident of this
22 state, appointed as follows:

23 (1) Two persons appointed by the Governor who shall
24 have been a licensed private investigator in this state for at
25 least five years prior to the date of their appointment.
26 Initially, the Governor shall appoint two members for a term

1 of three years. Thereafter, successor members shall be
2 appointed for terms of four years each.

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

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

16 (4) One person appointed by the Attorney General who
17 shall have been a licensed private investigator in this state
18 for at least five years prior to the date of appointment.
19 Initially, the Attorney General shall appoint the member for
20 two years. Thereafter, successor members shall be appointed
21 for terms of four years.

22 (5) Two persons appointed by the Alabama Private
23 Investigators Association who shall have been a licensed
24 private investigator in this state for at least five years
25 prior to the date of appointment. Initially, the Alabama
26 Private Investigators Association shall appoint the two

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

3 (b) Following the initial appointments, all
4 successor members of the board shall be appointed for a term
5 of four years and shall serve until their successors are
6 appointed and qualified by subscribing to the constitutional
7 oath of office, which shall be filed with the Secretary of
8 State.

9 (c) Any vacancy occurring on the board shall be
10 filled by the appointing authority of the vacating member for
11 the unexpired term.

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

14 (e) The appointing authority may remove a member of
15 the board for misconduct, incompetency, or willful neglect of
16 duty. The board may recommend to the appointing authority
17 suggested administrative actions that may be taken against a
18 board member for missing an excessive amount of meetings.

19 (f) Each member of the board shall receive a
20 certificate of appointment from the Governor before entering
21 upon the discharge of the duties of office.

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

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

4 Section 6. At the initial meeting of the board and
5 every time a new member is appointed to the board the members
6 of the board shall select from among their members a chair and
7 vice chair who shall each have the power to do all things
8 necessary and proper for carrying out the provisions of this
9 act not inconsistent with this act or the laws of this state.

10 Section 7. (a) The board may promulgate rules
11 necessary to implement this act and accomplish its objectives
12 subject to the Alabama Administrative Procedure Act.

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

16 (c) The board shall be entitled to the services of
17 the Attorney General in connection with the affairs of the
18 board.

19 Section 8. (a) The board shall establish regular and
20 special meetings for the purpose of transacting its business.
21 All members of the board shall be notified of the time and
22 place of each meeting pursuant to the Alabama Open Meeting
23 Act.

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

26 Section 9. (a) Except as otherwise provided in this
27 act, it shall be unlawful for any person to act as a private

1 investigator, without first obtaining a license from the
2 board. For prosecution purposes a violation of this act is
3 classified as a Class A misdemeanor.

4 (b) All licenses issued to private investigators
5 before the enactment of this act shall continue in effect
6 until their expiration. Each holder of a license may
7 thereafter obtain a renewal of the equivalent license under
8 this act by complying with the terms and conditions for
9 renewal prescribed in this act.

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

13 Section 10. An application and all information on an
14 application for licensure as a private investigator shall be
15 treated as confidential and shall be filed with the board on
16 forms prescribed by the board. The application shall include
17 all of the following information of the applicant:

18 (1) His or her full name.

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

20 (3) All residences during the immediate past five
21 years.

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

24 (5) Three sets of classifiable fingerprints.

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

1 Section 11. (a) Each individual applicant shall meet
2 the following criteria the he or she:

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

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

6 (3) Has not been declared by any court of competent
7 jurisdiction incompetent by reason of mental defect or disease
8 unless a court of competent jurisdiction has subsequently
9 declared the applicant competent.

10 (4) Has not been convicted of a crime of moral
11 turpitude, with the board having the final determination on
12 the interpretation of moral turpitude.

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

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

17 (b) A study guide shall be provided to any applicant
18 seeking to obtain an initial or renewal license under this
19 act.

20 (c) Any investigator currently licensed in the state
21 of Alabama shall not have to meet the initial application
22 requirements of this act, but shall be issued a license upon
23 application.

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

1 (1) A request that the Alabama Bureau of
2 Investigation compare the fingerprints submitted with the
3 application to fingerprints filed with the Alabama Bureau of
4 Investigation. On subsequent applications, the Alabama Bureau
5 of Investigation, at the request of the board, shall review
6 its criminal history files based upon the name, date of birth,
7 sex, race, and Social Security number of an applicant whose
8 fingerprints have previously been submitted to the bureau for
9 any new information since the date of the fingerprint
10 comparison, and shall furnish any information thereby derived
11 to the board.

12 (2) A request to submit the fingerprints to the
13 Federal Bureau of Investigation for a search of its files to
14 determine whether the individuals fingerprinted have any
15 recorded convictions.

16 (b) After the approval of the application by the
17 board, the board shall issue a license in a form prescribed by
18 the board to qualified applicants upon its receipt of a
19 nonrefundable, nonprorateable, private investigator license
20 fee as set by the board.

21 (c) (1) If an application for a license is denied,
22 the board shall notify the applicant in writing and shall set
23 forth the grounds for denial. If the grounds are subject to
24 correction by the applicant, the notice shall so state and
25 specify a reasonable period of time within which the applicant
26 shall make the required correction.

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

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

9 Section 13. (a) The board shall issue every private
10 investigator licensee an identification card that shall
11 contain the following information of the licensee:

12 (1) Name.

13 (2) Photograph.

14 (3) Physical characteristics.

15 (4) Private investigators license number.

16 (5) Expiration date of license.

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

19 (c) The identification card shall be carried on the
20 person of the licensee when engaged in the activities of the
21 licensee.

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

26 Section 15. Upon receipt of the application and
27 applicable fees, the board shall conduct an investigation to

1 determine whether the statements made in the application are
2 true.

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

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

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

13 (d) No renewal application may be accepted more than
14 30 days after the expiration date of the license or after
15 September 30 of the calendar year.

16 Section 17. (a) The board may suspend, revoke, or
17 refuse to issue or renew any license issued by it upon finding
18 that the holder or applicant has committed any of the
19 following acts:

20 (1) A violation of this act or any rule promulgated
21 under this act.

22 (2) Fraud, deceit, or misrepresentation regarding an
23 application or license.

24 (3) Knowingly and willfully making a material
25 misstatement in connection with an application for a license
26 or renewal.

1 (4) A conviction by a court of competent
2 jurisdiction of a felony crime.

3 (5) A conviction by a court of competent
4 jurisdiction of a misdemeanor if the board finds that the
5 conviction reflects unfavorably on the fitness for the
6 license.

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

11 (b) In addition to, or in lieu of, any other lawful
12 disciplinary action under this section, the board may assess a
13 civil penalty not exceeding two thousand dollars (\$2,000) for
14 a violation of this act.

15 (c) A license may be suspended for the remaining
16 license period and renewed during any period in which the
17 license was suspended.

18 Section 18. (a) No licensee or applicant shall be
19 required to obtain any authorization, permit, or license from,
20 or pay any other fee or post a bond in, any municipality,
21 county, or other political subdivision of this state to engage
22 in any activity regulated under this act.

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

26 Section 19. The board may negotiate and enter into
27 reciprocal agreements with the appropriate officials in other

1 states to permit licensed investigators who meet or exceed the
2 qualifications established in this act to operate across state
3 lines under mutually acceptable terms.

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

6 (1) Each licensee, every two years.

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

9 Section 21. The following acts when committed by an
10 individual licensed as a private investigator in Alabama shall
11 constitute a violation punishable as a Class A misdemeanor:

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

16 (2) To make unsubstantiated monetary charges to a
17 client for services not rendered or transportation not
18 utilized.

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

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

1 (5) To reveal information obtained for a client
2 during an investigation to another individual except as
3 required by law.

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

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

11 Section 23. This act does not apply to the
12 following:

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

17 (2) An investigation of the internal affairs of a
18 private business entity investigating a current or prospective
19 employee.

20 (3) An employee of any business or entity that is
21 not primarily engaged in the business of private
22 investigations or private investigating when that employee is
23 working under a contract for his or her services that his or
24 her employer signed with a third party.

25 (4) Any person or professional (including without
26 limitation attorneys providing legal services) who is not
27 primarily engaged in the business of private investigations or

1 private investigating, but who in conjunction with his or her
2 business or profession may occasionally perform private
3 investigations or private investigating.

4 (5) Any business or entity that is not primarily
5 engaged in the business of private investigations or private
6 investigating.

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

9 Section 24. (a) There is created within the board a
10 division of investigation that shall be its official
11 investigative agency.

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

15 (c) The board or any executive director of the board
16 may subpoena those persons or documents necessary to any
17 investigation undertaken under this act if other means
18 including, but not limited to, notification by return receipt
19 registered United States mail, have not produced the desired
20 results.

21 Section 25. (a) Each licensee shall complete eight
22 hours of continuing professional education acceptable to the
23 board in each calendar year.

24 (b) The board shall make every effort to ensure at
25 least one seminar per year will be held in each congressional
26 district of the state providing an opportunity to fulfill the
27 continuing professional education requirements of this

1 section, which shall include at least one hour per year on
2 ethics.

3 (c) The board shall promulgate rules necessary to
4 carry out this section.

5 Section 26. (a) Any person offering private
6 investigator training must first be certified by the board.
7 The board shall ensure that the instructors employed by the
8 training provider possess both the experience and academic
9 credentials to ensure that the curriculum and instruction will
10 be beneficial to those seeking to enter the profession. In
11 order to qualify as a certified trainer or instructor, or
12 both, the trainer shall meet the following criteria:

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

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

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

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

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

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

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

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

8 (e) The certified trainer shall certify that he or
9 she has successfully completed the training and shall submit
10 the certification to the board.

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

13 Section 27. No action taken under this act shall
14 preclude prosecution under any other law of this state.

15 Section 28. Although this bill would have as its
16 purpose or effect the requirement of a new or increased
17 expenditure of local funds, the bill is excluded from further
18 requirements and application under Amendment 621, now
19 appearing as Section 111.05 of the Official Recompilation of
20 the Constitution of Alabama of 1901, as amended, because the
21 bill defines a new crime or amends the definition of an
22 existing crime.

23 Section 29. This act shall become effective on the
24 first day of the third month following its passage and
25 approval by the Governor, or its otherwise becoming law.