

1 SB172
2 145601-4
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

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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 from 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 of private investigation;
19 to create the Alabama Private Investigation Board to regulate
20 and license the practice of private investigation; to provide
21 for the membership, terms, filling of vacancies, powers,
22 including disciplinary powers, and duties of the board; to
23 provide for the application for and licensure of private
24 investigators; to establish the Alabama Private Investigation
25 Board Fund within the State Treasury and to provide for an
26 appropriation from the fund for fiscal years 2013 and 2014; to
27 provide penalties; and in connection therewith would have as

1 its purpose or effect the requirement of a new or increased
2 expenditure of local funds within the meaning of Amendment 621
3 of the Constitution of Alabama of 1901, now appearing as
4 Section 111.05 of the Official ReCompilation of the
5 Constitution of Alabama of 1901, as amended.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

19 (2) PRIVATE INVESTIGATION. The compensated act of
20 any individual or company engaging in the business of
21 obtaining or furnishing information with reference to any of
22 the following:

23 a. A crime committed or threatened against the
24 United States or any state or territory of the United States.

25 b. The identity, habits, conduct, business,
26 occupation, honesty, integrity, credibility, including, but
27 not limited to, the credibility of a person giving testimony

1 in a criminal or civil proceeding, knowledge, trustworthiness,
2 efficiency, loyalty, activity, movement, whereabouts,
3 affiliations, associations, transactions, acts, reputations,
4 or character of any person.

5 c. The location, disposition, or recovery of lost or
6 stolen property.

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

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

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

19 (4) PRIVATE INVESTIGATOR. A person who is engaged in
20 private investigation as defined herein and who is licensed in
21 accordance with this act.

22 Section 3. No person shall practice private
23 investigation or hold himself or herself out to the public as
24 a private investigator or use any term, title, or abbreviation
25 that expresses, infers, or implies that the person is licensed
26 as a private investigator unless the person at the time holds
27 a valid license to practice private investigation as provided

1 in this act. All applicants shall pass a criminal background
2 check based on criteria established pursuant to Section 4.

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

7 (b) Private investigator members provided for herein
8 shall have had five years of experience as an investigator
9 prior to his or her appointment. After five years following
10 the effective date of this act, private investigator members
11 who are appointed to the board shall have been licensed
12 pursuant to this act as a private investigator for a period of
13 at least five years prior to his or her appointment.

14 (c) The following members shall be appointed to the
15 board:

16 (1) Two persons appointed by the Governor, one of
17 whom must be a private investigator in this state and one of
18 whom shall be a consumer who will represent the public at
19 large. The Governor shall appoint the two members to initial
20 terms of three years. Thereafter, successor members shall be
21 appointed for terms of four years each.

22 (2) One person appointed by the Lieutenant Governor,
23 who must be a private investigator. The Lieutenant Governor
24 shall appoint the member for an initial term of two years.
25 Thereafter, successor members shall be appointed for terms of
26 four years.

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

6 (4) One person appointed by the Attorney General who
7 must be a private investigator. The Attorney General shall
8 appoint the member for an initial term of two years.
9 Thereafter, successor members shall be appointed for terms of
10 four years.

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

15 (6) One person appointed by the Alabama Private
16 Investigators Association who must be a private investigator.
17 The association shall appoint the member for an initial term
18 of four years. Thereafter, successor members shall be
19 appointed for terms of four years.

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

1 (e) Any vacancy occurring on the board shall be
2 filled by the appointing authority of the vacating member for
3 the unexpired term.

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

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

11 (h) Each member of the board shall receive a
12 certificate of appointment from the Governor before entering
13 upon the discharge of the duties of office.

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

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

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

1 preside over meetings of the board and a vice chair to preside
2 in the absence of the chair.

3 Section 7. There is hereby created in the State
4 Treasury for the use of the Alabama Private Investigation
5 Board a fund to be known as the Alabama Private Investigation
6 Board Fund. All application and license fees, penalties,
7 fines, and any other funds collected by the board under the
8 provisions of this act are to be deposited in this fund and
9 used only to carry out the operations of the board. No monies
10 shall be withdrawn or expended from the fund for any purpose
11 unless the monies have been appropriated by the Legislature
12 and allocated pursuant to this chapter. Any monies
13 appropriated shall be budgeted and allotted pursuant to the
14 Budget Management Act in accordance with Article 4 (commencing
15 with Section 41-4-80) of Chapter 4 of Title 41, Code of
16 Alabama 1975, and only in the amounts provided by the
17 Legislature in the general appropriations act or other
18 appropriations act. There is hereby appropriated to the
19 Alabama Private Investigation Board the sum of all monies
20 collected and deposited into the Alabama Private Investigation
21 Board Fund for each of the fiscal years ending September 30,
22 2013, and September 30, 2014, to be used for the operations of
23 the board.

24 Section 8. (a) The board may promulgate rules
25 necessary to implement this act and accomplish its objectives
26 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 Attorney General shall provide legal
5 services to the board and board employees in connection with
6 official duties and actions of the board.

7 Section 9. (a) The board shall establish regular and
8 special meetings for the purpose of transacting its business
9 as provided by rules promulgated by the board. Notice of board
10 meetings and meetings of the board shall comply with the
11 Alabama Open Meetings 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 board.
17 For prosecution purposes, a violation of this act is
18 classified as a Class A misdemeanor.

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

22 Section 11. An application and all information on an
23 application for licensure as a private investigator shall be
24 treated as confidential and shall be filed with the board on
25 forms prescribed by the board. The application shall include
26 all of the following information of the applicant:

27 (1) His or her full name.

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

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

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

6 (5) Three sets of classifiable fingerprints.

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

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

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

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

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

18 (4) Has not been convicted of a crime of moral
19 turpitude, with the board having the final determination on
20 the interpretation of moral turpitude.

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

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

25 (b) A study guide shall be provided to any applicant
26 seeking to obtain an initial or renewal license under this
27 act.

1 (c) Any investigator currently holding a business
2 license in the state of Alabama shall not have to meet the
3 initial application requirements of this act, but shall be
4 issued a license pursuant to this act upon application.

5 Section 13. (a) Upon receipt of an application for a
6 license pursuant to this act, nonrefundable, nonprorateable
7 application fees shall be submitted to the board by the
8 applicant for the following services:

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

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

24 (b) After the approval of the application by the
25 board, the board shall issue a license in a form prescribed by
26 the board to each qualified applicant upon its receipt of a

1 nonrefundable, nonprorateable private investigator license fee
2 as set by the board.

3 (c) (1) If an application for a license is denied,
4 the board shall notify the applicant in writing and specify
5 the grounds for denial. If the grounds are subject to
6 correction by the applicant, the notice shall so state and
7 specify a reasonable period of time within which the applicant
8 shall make the required correction.

9 (2) The applicant may submit an application for
10 reconsideration to the board within 30 days from the date of
11 receipt of denial.

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

17 Section 14. (a) The board shall issue to every
18 private investigator licensee an identification card, which
19 shall be issued in credit card size, be permanently laminated,
20 and contain the following information of the licensee:

- 21 (1) Name.
- 22 (2) Photograph.
- 23 (3) Physical characteristics.
- 24 (4) Private investigator's license number.
- 25 (5) Expiration date of license.

1 (b) The identification card shall be carried on the
2 person of the licensee when engaged in the activities of the
3 licensee.

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

8 Section 16. Upon receipt of an application and
9 applicable fees, the board shall conduct an investigation to
10 determine whether the statements made in the application are
11 true.

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

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

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

23 (d) No renewal application may be accepted more than
24 30 days after the expiration date of the license.

25 Section 18. (a) The board may suspend, revoke, or
26 refuse to issue or renew any license issued by it upon finding

1 that the holder or applicant has committed any of the
2 following acts:

3 (1) A violation of this act or any rule promulgated
4 pursuant to this act.

5 (2) Fraud, deceit, or misrepresentation regarding an
6 application or license.

7 (3) Knowingly and willfully making a material
8 misstatement in connection with an application for a license
9 or renewal.

10 (4) A conviction by a court of competent
11 jurisdiction of a felony.

12 (5) A conviction by a court of competent
13 jurisdiction of a Class A misdemeanor, if the board finds that
14 the conviction reflects unfavorably on the fitness of the
15 person for the license.

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

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

24 (c) A license may be suspended for the remaining
25 license period and renewed during any period in which the
26 license was suspended.

1 Section 19. (a) No licensee or applicant shall be
2 required to obtain any authorization or license from, or pay
3 any other fee or post a bond in, any municipality, county, or
4 other political subdivision of this state to engage in any
5 activity regulated under this act.

6 (b) Notwithstanding subsection (a), a municipality,
7 county, or other political subdivision of this state may
8 impose a bona fide occupational tax or business license fee on
9 a licensee.

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

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

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

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

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

25 (1) To knowingly make a material misrepresentation
26 as to the ability of the individual to perform the

1 investigation required by a potential client in order to
2 obtain employment.

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

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

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

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

16 (b) Persons licensed pursuant to this act shall
17 report any suspected instances of child abuse or neglect to a
18 local law enforcement agency or the Department of Human
19 Resources, or both.

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

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

25 (1) An employee of any business or entity that is
26 not primarily engaged in the business of private investigation

1 when that employee is performing duties related to his or her
2 employment.

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

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

10 (4) Any person or professional, including without
11 limitation an attorney providing legal services, who is not
12 primarily engaged in the business of private investigation,
13 but who in conjunction with his or her business or profession
14 may occasionally perform private investigation services.

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

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

19 (7) Any certified public accountant authorized to
20 engage in the practice of public accountancy in this state or
21 any entity licensed or otherwise permitted to engage in the
22 practice of public accountancy in this state or the affiliated
23 entities thereof.

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

1 b. An employee of a single attorney or single law
2 firm who is acting within the employee's scope of employment
3 for the attorney or law firm; or

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

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

12 a. Computer or digital forensic services.

13 b. The acquisition, review, or analysis of digital
14 or computer-based information in order to obtain or furnish
15 information for evidentiary or other purposes or to provide
16 expert testimony before any court, board, officer, or
17 investigating committee.

18 c. Network or system vulnerability testing,
19 including network scans and risk assessment and analysis of
20 computers connected to a network.

21 Section 25. (a) There is created within the board a
22 Division of Investigation that shall be the board's official
23 investigative agency.

24 (b) Each licensee shall provide to the investigative
25 division staff all records that pertain to the exact nature of
26 the complaint under investigation and upon the issuance of a
27 subpoena.

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

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

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

16 (c) The board shall promulgate rules necessary to
17 carry out this section.

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

27 (1) Is 21 years of age.

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

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

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

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

16 (1) Is 19 years of age.

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

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

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

26 (f) The training program, fees, and requirements
27 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.