

CS FOR HOUSE BILL NO. 9()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES HUGHES, Gruenberg

A BILL

FOR AN ACT ENTITLED

1 **"An Act providing for the licensing and regulation of private investigators; relating to**
2 **private investigator agencies; and providing for an effective date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1.** AS 08.01.010 is amended by adding a new paragraph to read:

5 (42) regulation of private investigators under AS 08.85.

6 *** Sec. 2.** AS 08 is amended by adding a new chapter to read:

7 **Chapter 85. Private Investigators and Private Investigator Agencies.**

8 **Sec. 08.85.100. License required.** (a) A person may not practice as a private
9 investigator unless the person is licensed under this chapter or exempt from licensure
10 under AS 08.85.300.

11 (b) A person may not use the title "private investigator," or any variation of
12 the title, or hold out publicly as a private investigator unless the person is licensed
13 under this chapter.

14 (c) A person may not practice as a private investigator unless the person owns,

operates, or is employed by a private investigator agency.

(d) A person who knowingly violates this section is guilty of a class A misdemeanor and may be punished as provided in AS 12.55.

Sec. 08.85.110. Scope of practice. A private investigator licensed under this chapter may engage in business or accept employment to furnish, agree to conduct, or conduct an investigation for the purpose of obtaining information about

(1) criminal offenses;

(2) the identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of a person, entity, or thing;

(3) the location, disposition, or recovery of lost or stolen property;

(4) the cause or responsibility for fires, libels, losses, accidents, or damage or injury to persons or property;

(5) evidence to be used before a court, board, officer, or investigative committee;

(6) the presence of electronic eavesdropping devices; or

(7) the truth or falsity of a statement or representation.

Sec. 08.85.120. General requirements for private investigators. To obtain a private investigator license, an applicant

(1) must be a citizen or resident alien of the United States;

(2) may not have been convicted of a felony in any jurisdiction in the 10 years preceding the application for a license;

(3) may not have been convicted in this or another jurisdiction of a crime of moral turpitude or sexual misconduct, as defined by the department, that the department determines

(A) directly relates to the applicant's capacity to perform the duties of a private investigator; and

(B) provides grounds for denying licensure under this chapter to protect the citizens of the state;

(4) may not be on probation, on parole, or named on an outstanding

1 arrest warrant;

2 (5) may not have been declared by a court of competent jurisdiction to
3 be mentally incompetent unless a court has since declared the person to be competent;
4 and

5 (6) may not be currently employed

6 (A) as a peace officer;

7 (B) by an agency of the United States or a state or local
8 government if the position held involves the enforcement of law or provides
9 access to police or intelligence information or files generally considered to be
10 restricted to law enforcement or investigative personnel only; or

11 (C) in a position the department determines to represent a
12 conflict of interest for the prospective licensee.

13 **Sec. 08.85.130. Classes of licenses.** (a) The department shall issue a class A
14 license under this chapter to an individual who qualifies under AS 08.85.120 and
15 08.85.140. A class A license entitles an individual to operate a private investigator
16 agency as an individual, partner, or chief executive officer of a corporation.

17 (b) The department shall issue a class B license under this chapter to an
18 individual who qualifies under AS 08.85.120 and 08.85.150. A class B license entitles
19 an individual to be employed by a private investigator agency to perform private
20 investigations.

21 **Sec. 08.85.140. Private investigator class A license; qualifications.** (a) The
22 department shall issue a private investigator class A license to an individual who, in
23 addition to meeting the requirements of AS 08.85.120,

24 (1) is at least 21 years of age;

25 (2) pays the required fee; and

26 (3) has provided evidence satisfactory to the department of work
27 experience and education or their equivalent of one of the following:

28 (A) a high school diploma or equivalent and three or more
29 years of experience in investigative work;

30 (B) an associate's degree from an accredited college or
31 university and two or more years of experience in investigative work; or

1 (C) a bachelor's, master's, or doctorate degree from an
2 accredited college or university and one or more years of experience in
3 investigative work.

4 (b) In this section, a year's experience means 1,500 hours or more of actual
5 compensated work performed before the filing of an application. An applicant shall
6 substantiate the experience by providing written certifications from previous
7 employers. If an applicant is unable to supply written certifications from previous
8 employers, an applicant may offer written certifications from people other than
9 employers who, based on personal knowledge, can substantiate the applicant's
10 employment.

11 **Sec. 08.85.150. Private investigator class B license; qualifications.** The
12 department shall issue a class B license under this chapter to an applicant who, in
13 addition to meeting the general requirements of AS 08.85.120,

14 (1) is at least 18 years of age;
15 (2) pays the required fee;
16 (3) has a high school diploma or equivalent; and
17 (4) is employed by or has an offer of employment from a private
18 investigator agency that meets the requirements of AS 08.85.220.

19 **Sec. 08.85.160. License application.** (a) An applicant for a license under this
20 chapter shall submit an application to the department on a form and in a manner
21 provided by the department.

22 (b) An application must include the following information about an applicant:
23 (1) the applicant's full name;
24 (2) the applicant's business name;
25 (3) the applicant's residence address;
26 (4) the applicant's residential telephone number;
27 (5) the applicant's residential mailing address;
28 (6) the applicant's residence history for the five years immediately
29 preceding the application;
30 (7) the applicant's business address;
31 (8) the applicant's business telephone number;

- 1 (9) the applicant's sex;
- 2 (10) the applicant's height and weight;
- 3 (11) the applicant's hair and eye color;
- 4 (12) the applicant's date of birth;
- 5 (13) the applicant's social security number;
- 6 (14) the applicant's driver's license number and expiration date;
- 7 (15) the applicant's citizenship;
- 8 (16) the applicant's criminal history and conviction record;
- 9 (17) the applicant's employment history for the five years preceding
- 10 the date of application, including reasons for termination and the applicant's eligibility
- 11 for rehire.

12 (c) The application must include the applicant's

- 13 (1) statement that the applicant is free from any mental illness or
- 14 disability that may adversely affect the applicant's performance as a private
- 15 investigator;
- 16 (2) statement that the applicant has read and understands AS 08.85.100
- 17 - 08.85.310;
- 18 (3) statement that the information contained in the application is true;
- 19 and
- 20 (4) notarized signature.

21 (d) The applicant shall submit with the application

- 22 (1) fingerprints and the fees required by the Department of Public
- 23 Safety under AS 12.62.160 for criminal justice information and a national criminal
- 24 history record check; the department shall submit the fingerprints and fees to the
- 25 Department of Public Safety for a report of criminal justice information under
- 26 AS 12.62 and a national criminal history record check under AS 12.62.400;
- 27 (2) two photographs of the applicant in a form required by the
- 28 department; and
- 29 (3) evidence satisfactory to the department that the applicant meets the
- 30 applicable requirements of this chapter.

31 (e) The department shall require that an application for a license issued under

1 this chapter be submitted under oath or affirmation or with notice that false statements
2 made are punishable as unsworn falsification in the second degree under
3 AS 11.56.210.

4 **Sec. 08.85.200. Reciprocity.** The department may grant a private investigator
5 license under this chapter to a person who

6 (1) applies on a form prescribed by the department;

7 (2) pays the appropriate application fee; and

8 (3) holds a valid license, registration, identification, or similar card
9 issued by a state that

10 (A) recognizes and accepts licenses issued under this chapter in
11 a reciprocal manner; and

12 (B) the department determines has selection, training, and other
13 requirements at least as stringent as those required by this chapter.

14 **Sec. 08.85.210. License cards.** (a) The department shall issue a class A license
15 card to each individual licensed as a class A private investigator under this chapter and
16 a class B license card to each individual licensed as a class B private investigator
17 under this chapter.

18 (b) The license cards shall bear the name, license number, class of license,
19 photograph, signature, and identifying data of the licensee, and the signature of the
20 commissioner.

21 (c) A licensed private investigator shall carry the license card while
22 performing the duties of a private investigator and shall produce the card within 72
23 hours on request of an employee of the department.

24 (d) A licensed private investigator whose license is suspended or revoked shall
25 return the license card to the department within 10 days after the date of notification of
26 the suspension or revocation of the license.

27 (e) In the event of loss or destruction of a license card, the licensee may apply
28 to the department for a replacement card.

29 **Sec. 08.85.220. Private investigator agency; unlawful practice.** (a) A person
30 may operate a private investigator agency if

31 (1) the person

1 (A) is an individual and holds a class A license under this
2 chapter;

3 (B) is a partnership and each partner holds a class A license
4 under this chapter; or

5 (C) is a corporation or another entity and the principal or chief
6 executive officer holds a class A license under this chapter;

7 (2) the agency holds a current business license issued by the
8 department and a municipal license, if required; and

9 (3) the agency has a policy of insurance, surety bond, or other form of
10 security for not less than \$15,000.

11 (b) A person who knowingly violates this section is guilty of a class A
12 misdemeanor.

13 **Sec. 08.85.230. License renewal; nontransferability.** (a) A license issued
14 under this chapter is nontransferable and, unless revoked or suspended, may be
15 renewed on a date set by the department upon proof of the licensee's continued
16 competency.

17 (b) A licensee shall apply for renewal and pay the renewal fee as established
18 by the department on or before the renewal date of the license. A licensee who fails to
19 pay the renewal fee by the renewal date set by the department may, within 30 days,
20 pay the renewal fee plus a penalty in an amount to be established by the department
21 that is not more than twice the amount of the renewal fee.

22 (c) If a licensee fails to pay the renewal fee, with accrued penalty, within 30
23 days after the renewal date, the license terminates. The person may reapply under
24 AS 08.85.140 or 08.85.150.

25 (d) Before renewing a license, the department may request criminal history
26 information from the Department of Public Safety. Every third time a licensee applies
27 for renewal, the department shall require the licensee to submit the fingerprints and
28 fees required by AS 12.62.160 for criminal justice information and a national criminal
29 history record check. The department may not renew the license of a licensee who
30 does not meet the requirements of AS 08.85.120.

31 **Sec. 08.85.240. Firearms training.** A licensee may not carry a firearm while

1 practicing as a private investigator unless the licensee provides proof to the
2 department that the licensee

3 (1) has successfully completed firearms training acceptable to the
4 department;

5 (2) has successfully completed a handgun course approved by the
6 Department of Public Safety under AS 18.65.715; and

7 (3) maintains a permit to carry a concealed handgun under
8 AS 18.65.700 - 18.65.790.

9 **Sec. 08.85.250. Prohibited practices.** The department may impose the
10 disciplinary sanctions authorized for boards under AS 08.01.075 or refuse to issue a
11 license under this chapter when it finds that the licensee or the applicant

12 (1) knowingly violated a provision of this chapter or a regulation
13 adopted under this chapter;

14 (2) accepted employment that the licensee under this chapter knows to
15 include gathering information intended for illegal purposes;

16 (3) knowingly made a material misstatement or omission in the
17 application for or renewal of a license, including falsifying requested identification
18 information;

19 (4) violated AS 11.56.827 or 11.56.830 or otherwise caused another
20 person to reasonably believe that the private investigator is an agent or employee of
21 the state, the United States, or a political subdivision of the state or United States by

22 (A) wearing a uniform or presenting or displaying a badge or
23 credentials that would cause a reasonable person to believe that the person has
24 official authority as a state, federal, or municipal representative or law
25 enforcement officer;

26 (B) displaying warning or flashing vehicle lights; or

27 (C) committing an act or making a statement intended to
28 convey official status;

29 (5) has been convicted of a crime that directly relates to the business
30 for which the license is held or sought, regardless of whether a sentence was
31 suspended; a conviction based on a plea of nolo contendere creates a rebuttable

1 presumption of guilt as to the underlying charges, and the department shall allow the
 2 individual being disciplined or denied a license under this chapter to present any
 3 mitigating evidence relevant to the reason for or circumstances surrounding the plea;

4 (6) solicited business for an attorney in return for compensation;

5 (7) failed to cooperate with the department by

6 (A) not furnishing necessary papers or documents requested for
 7 purposes of conducting an investigation for disciplinary action, denial,
 8 suspension, or revocation of a license under this chapter;

9 (B) not furnishing in writing a full and complete explanation
 10 covering the matter contained in a complaint filed with the department; or

11 (C) not responding to a subpoena issued by the department,
 12 regardless of whether the recipient of the subpoena is the accused in the
 13 proceeding; or

14 (8) failed to comply with an order issued by the department.

15 **Sec. 08.85.260. Immunity for complainants.** An action may not be brought
 16 against a person for damages resulting from a complaint filed in good faith with the
 17 department about a person licensed or certified under this chapter.

18 **Sec. 08.85.270. Administrative Procedure Act.** AS 44.62 (Administrative
 19 Procedure Act) governs regulations and proceedings under this chapter.

20 **Sec. 08.85.300. Exemptions.** The licensing requirements of this chapter do not
 21 apply to

22 (1) a person who is employed exclusively or regularly by one
 23 employer that is not a private investigator agency and who performs investigations
 24 solely in connection with the affairs of that employer;

25 (2) an officer or employee of the United States, a political subdivision
 26 of the United States, this state, or a political subdivision of this state, while engaged in
 27 the performance of the officer's or employee's official duties;

28 (3) a person engaged exclusively in the business of obtaining and
 29 furnishing information about the financial rating of persons;

30 (4) an attorney, while performing duties as an attorney;

31 (5) a licensed collection agency, or its employee while acting within

1 the scope of that person's employment and making an investigation incidental to the
2 business of the agency;

3 (6) an insurer, insurance agent, or insurance broker licensed by the
4 state, while performing duties in connection with insurance transacted by the insurer,
5 insurance agent, or insurance broker;

6 (7) an employee of a bank subject to the jurisdiction of the department
7 or the United States Comptroller of the Currency, or a savings and loan association
8 subject to the jurisdiction of this state or the Federal Home Loan Bank Board while
9 acting within the scope of that person's employment;

10 (8) a licensed insurance adjuster performing the adjuster's duties within
11 the scope of the adjuster's license;

12 (9) a secured creditor engaged in the repossession of the creditor's
13 collateral or a lessor engaged in the repossession of leased property in which the lessor
14 claims an interest;

15 (10) a forensic scientist or an accident reconstructionist who is
16 engaged exclusively in collecting and analyzing physical evidence and data relating to
17 an accident or other matter and compiling the evidence or data to render an opinion of
18 likely cause, fault, or circumstance of the accident or matter, and who does not hold
19 out to be an investigator in any other capacity;

20 (11) a person solely engaged in the business of securing information
21 about persons or property from public records;

22 (12) a person solely engaged in the business of pre-employment
23 background screenings;

24 (13) a member or employee of the news media, while engaged in
25 obtaining information for the purpose of disseminating news to the public;

26 (14) a person who has a private investigator license or the equivalent
27 from another jurisdiction who

28 (A) registers with the department before acting as a private
29 investigator in the state;

30 (B) acts as a private investigator in the state for less than 30
31 days in a calendar year;

(C) demonstrates to the satisfaction of the department that the license requirements of the other jurisdiction are at least as restrictive as this state's requirements; and

(D) demonstrates to the satisfaction of the department that the other jurisdiction allows licensees from this state to operate in the other jurisdiction;

(15) a private process server who is licensed in this state and is performing duties under the Alaska Rules of Court;

(16) a paralegal in the employ of an attorney or law firm, while performing paralegal services on behalf of the attorney or law firm;

(17) a person who, for hire, or otherwise, conducts genealogical research and does not represent that the person is a private investigator; and

(18) a person conducting an investigation to determine the cause of a fire, explosion, or accident.

Sec. 08.85.310. Definitions. In this chapter,

(1) "commissioner" means the commissioner of commerce, community, and economic development;

(2) "department" means the Department of Commerce, Community, and Economic Development.

* **Sec. 3.** AS 12.62.400 is amended by adding a new paragraph to read:

(18) licensure as a private investigator under AS 08.85.

* **Sec. 4.** AS 44.62.330(a) is amended by adding a new paragraph to read:

(46) Department of Commerce, Community, and Economic Development concerning the licensing and regulation of private investigators under AS 08.85.

* **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITIONAL PROVISIONS. (a) An individual who, before July 1, 2015, was licensed as a private investigator or private investigator agency by a political subdivision of this state or who, before July 1, 2015, held a current business license from the state for a private investigator business shall be issued a private investigator class A license by the

1 department if the person

2 (1) meets the qualifications of AS 08.85.120, enacted by sec. 2 of this Act;

3 (2) provides evidence satisfactory to the department that the person has
4 performed 1,500 hours or more of private investigation work in the business for which the
5 person holds a license;

6 (3) completes the application process required under AS 08.85.160, enacted
7 by sec. 2 of this Act; and

8 (4) pays the required fees.

9 (b) A person who does not meet the requirements of (a) of this section and, before
10 July 1, 2015, was a private investigator employed by a person who satisfied the requirements
11 of (a) of this section shall be issued a private investigator class B license by the department if
12 the person

13 (1) meets the qualifications of AS 08.85.120, enacted by sec. 2 of this Act;

14 (2) completes the application process required under AS 08.85.160, enacted
15 by sec. 2 of this Act; and

16 (3) pays the required fees.

17 (c) A person licensed under this section shall comply with license renewal
18 requirements under AS 08.85.230, enacted by sec. 2 of this Act.

19 (d) In this section, "department" means the Department of Commerce, Community,
20 and Economic Development.

21 * **Sec. 6.** This Act takes effect July 1, 2015.