

INVESTIGATIVE SERVICES OF ALASKA

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February 17, 2015

To: Honorable Representatives
Labor and Commerce Committee
State Capital Room 24
Juneau, Alaska 99801

Re: HB 9 Private Investigators

Honorable Representatives:

This letter is to communicate concerns with HB9. Last session, a certain representative's chief of staff stated that any person against licensing of private investigators is one who would not qualify under the licensing requirement. I meet or exceed all qualifications and requirements as stated in the current proposed house bill and I am against it as currently presented. I provide services to the State of Alaska, U.S. Federal government, as well as government and private sector contractors and attorneys throughout Alaska.

I will address the concerns by order of the Section Analysis (HB009a):

Section 08.85.120: (5) "may not have been dishonorably discharged from the armed forces of the United States;" this should not be a disqualifier. There have been members of the US Military who were dishonorably discharged from the military that have gone on to become lawyers, doctors, engineers, politicians and even a magistrate. To that matter, this country has had a President who evaded the draft during the Vietnam conflict, which was considered a felony. I have served in the US military, was honorably discharged, and have seen some dishonorable discharges over a simple DUI first offense or having a relationship considered illegal under UCMJ while legal in the civilian world. This item should be removed. If the discharge was a serious offense, the other criteria will disqualify the individual.

Section 08.85.160: (9) (10) (11) (15) (17) (18) are too invasive and violate federal law. Private Investigators are not applying to be sworn peace officers nor hold public office. The questions should be reviewed by the State's legal counsel (CFR Title 29/Americans with Disabilities Act (ADA)/ Immigration Reform and Control Act). These questions as presented could lead to legal action against the state, thus creating an unintended cost of licensing to the State.

Section 08.85.220: Representative Hugh's chief of staff stated in the hearing on February 11, 2015 that is was not certain if a single member license holder would be required to hold an agency certificate. There is no language in this section that even possesses a hint of exemption for a single member investigator that holds a Class A license from also having to hold an agency certificate. Once again this creates an additional burden to the investigator. What will the price of the agency certificate be? Many investigators are concerned the agency certificate could be equal or greater than the current expected price of \$2,700 a year. If that becomes the case, an investigator would have to pay \$5,400 a year for only the license and certificate only. Then add the costs of application process (finger print and background, which was stated would be the responsibility of the applicant), the insurance or surety bond; in addition to municipal and borough license expenses. The current market rate for investigations ranges from \$50 to \$100 an hour. The burden rate is not reflective of the market rate. The State of Alaska pays a maximum of \$55 an hour for contracted investigators in its criminal division. I will focus more on the financial implications at the end of this letter.

Section 08.85.230: (d) "Every third time a licensee applies for renewal; the department shall require the licensee to submit the fingerprints and fees required..." This requirement does nothing but create an additional cost to the investigator. If those proposing the bill actually had first-hand knowledge of the CJI and the "national criminal history record check" they would know the prints stay on file. Finger prints do not change; so any action that would link a crime to the individual's fingerprints would reflect from the previous finger print entry. This demonstrates a revenue generation tactic more than a protection of the public position.

Section 08.85.240: This provision should be revisited by the legal and risk management departments. As presented, this bill is a violation under federal and state laws. In addition this section, along with many others, gives too much discretion to "the department." As worded, it also sets the state up for potential legal action in the event that there is an incident involving a firearm; thus again creating an unintended expense to the state for the licensing requirements.

Section 08.85.260: "4 (c) committing an act or making a statement intended to convey official status." With much of this proposed bill, this statement is too vague and gives too much discretion to "the department". Once again this demonstrates a lack of review or input from professional investigators who work in the field or have risk management experience. In several federal contracts as well as criminal law procedure, an investigator working on behalf of the government must disclose his/her status that they are working for whatever division contracted. My concern is an individual lacking this knowledge in the department could consider this a "prohibited practice" and thus begin disciplinary action which would be unjustified. There needs to be language addressing private investigators working on behalf of any government entity and disclosure requirements.

(6) "solicited business for an attorney in return for compensation." Once again there needs to be more clarification. For example, if an individual calls me, explains their issue, and asks for assistance. I evaluate the needs and recommend three attorneys or even the best attorney though my experience that can effectively work with the client, and I tell them I will work their case when they retain counsel. But I tell them I work through the counsel to ensure the tasks I perform are related to what the attorney needs to best represent him or her in their situation. Client agrees and I bill the attorney direct for services. This is a fair practice but under this section it could be considered a prohibited practice by "the department."

Section 08.85.270: This section gives me the greatest concern and demonstrates to me the originators of this bill do not fully understand the profession and for that matter the full content and implications of this bill. During the hearing on February 11, 2015; the individual speaking for Representative Hugh's testified to the committee that this section gave protections to the private investigator, she went as far to give an example that a private investigator could not be sued if he served paperwork on a person in public place or was conducting the duties of his/her job. She misleads the committee on this section. The fact is it is reversed, under this section "An action may not be brought against a person for damages resulting from a complaint filed in good faith with the department about a person licensed or certified under this chapter." There is zero protection for the private investigator. In fact, it ties the hands of an investigator as some details, critical to the case in the defense of the investigator, are confidential and unable to be used to demonstrate an invalid complaint.

Section 08.085.300: This section is the most hypocritical of the alleged purpose of this house bill. During the hearing on February 11, 2015; the individual speaking for Representative Hugh's testified to the committee that the exemptions had other licensing requirements that regulated governance. She misleads the committee on this section. (1) (3) (5) (9) (10) (11) (12) (16) (17) (18); none of these exemptions contain licensing equal to this proposed licensing in this house bill.

For this bill to carry any merit and truly reflect the intention of the sponsor statement all persons serving in an investigative role should be required to be licensed. The only acceptable exemptions should be sworn peace officers.

Fiscal Note: \$2700, plus added required costs, a year for a license to where the market value ranges from \$50 to \$100 an hour is not conducive to fair market enterprise. The representation that a best case would be the same as a mid-wife license at \$1,700 a year is absurd. An investigators liability and impact on the public is nowhere near the level as a midwife.

Another factor is the amount of those who will refuse to be subjected to the outrageous costs associated with licensing which will then drive the price even higher for those who remain.

In closing, this bill is riddled with hypocrisy. The facts have been co-mingled with self-interest and anti-competition agendas. This bill gives too much latitude to "the department." In addition, the originators of this bill are not in possession of the complete facts and appeared to be conflicted as to the true source of information. All too often, bills are legislated into law with unintended consequences and lack of real information. This is one of those bills before the committee now. This is a "pass now" and "we will work out the details later" while containing massive exemptions bill. This committee is intelligent enough to know the ramifications of recent bills on the federal level that held similar positions.

I request the Labor and Commerce Committee reject HB9 as it is currently written. This issue was brought up several years ago and it was abandoned due to the high cost of operation. The same is true today. A well respected investigator puts it best, the Alaska market regulates private investigators; and for Alaska it has done a good job so far. An isolated incident, being used as an agenda, is the only reason this bill is before you again. Thank you for your time and attention.

Respectfully Submitted,

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