

CS FOR HOUSE BILL NO. 253()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-EIGHTH LEGISLATURE - SECOND SESSION**

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES HUGHES AND GRUENBERG

A BILL

FOR AN ACT ENTITLED

"An Act providing for the licensing and regulation of private investigators and private investigator agencies; and providing for an effective date."

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

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

(39) regulation of private investigators under AS 08.85.

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

Chapter 85. Private Investigators and Private Investigator Agencies.

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

(b) A person may not hold themselves out as a private investigator unless the person is licensed under this chapter.

(c) A person may not practice as a private investigator unless the person 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 or misdemeanor in any jurisdiction in the 10 years preceding license application;

(3) may not have been convicted in this or another jurisdiction of a crime of dishonesty 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, parole, or named on an outstanding arrest warrant;

1 (5) may not have been dishonorably discharged from the armed forces
2 of the United States;

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

6 (7) may not be currently employed

7 (A) as a peace officer;

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

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

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

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

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

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

26 (2) pays the required fee; and

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

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

31 (B) an associate's degree from an accredited college or

1 university and two or more years of experience in investigative work; or

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

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

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

15 (1) is 18 years of age or older;

16 (2) pays the required fee;

17 (3) has a high school diploma or equivalent; and

18 (4) is employed by or has an offer of employment from a private
19 investigator agency licensed under this chapter.

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

23 (b) An application must include the following information about an applicant:

24 (1) the applicant's full name;

25 (2) the applicant's business name;

26 (3) the applicant's residence address;

27 (4) the applicant's residential telephone number;

28 (5) the applicant's residential mailing address;

29 (6) the applicant's residence history for the five years immediately
30 preceding the application;

31 (7) the applicant's business address;

- 1 (8) the applicant's business telephone number;
- 2 (9) the applicant's sex;
- 3 (10) the applicant's height and weight;
- 4 (11) the applicant's hair and eye color;
- 5 (12) the applicant's date of birth;
- 6 (13) the applicant's social security number;
- 7 (14) the applicant's Alaska driver's license number and expiration date;
- 8 (15) the applicant's citizenship;
- 9 (16) the applicant's criminal history and conviction record;
- 10 (17) the applicant's employment history for the five-year period
- 11 preceding the date of application, including reasons for termination and the applicant's
- 12 eligibility for rehire;
- 13 (18) the name and address of all business entities in which the
- 14 applicant or the applicant's spouse has a vested interest.

(c) The application must include the applicant's

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

(d) The applicant shall submit with the application

- 23 (1) fingerprints and the fees required by the Department of Public
- 24 Safety under AS 12.62.160 for criminal justice information and a national criminal
- 25 history record check; the department shall submit the fingerprints and fees to the
- 26 Department of Public Safety for a report of criminal justice information under
- 27 AS 12.62 and a national criminal history record check under AS 12.62.400;
- 28 (2) two photographs of the applicant in a form required by the
- 29 department;
- 30
- 31

1 (3) letters of recommendation from three citizens with no prior felony
2 convictions, at least one of whom is a resident of the state, attesting to the good
3 character of the applicant; and

4 (4) documentation required by the department to substantiate that the
5 applicant meets the applicable requirements of this chapter.

6 (e) On receipt of an application for a license, the department shall conduct an
7 investigation to determine whether the facts set out in the application are accurate.

8 (f) The department shall require that an application for a license issued under
9 this chapter be submitted under oath or affirmation or with notice that false statements
10 made are punishable as unsworn falsification in the second degree under
11 AS 11.56.210.

12 **Sec. 08.85.170. Investigation of applicants.** (a) When investigating an
13 applicant for licensure or a certificate under this chapter, the department may require
14 any information and documentation that reasonably relates to the need to determine
15 whether the applicant meets the criteria for a license or certificate.

16 (b) A summary of the information acquired under this section, to the extent
17 that it is public information, may be forwarded by the department to an applicant's
18 employer.

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

21 (1) applies on a form prescribed by the department;
22 (2) pays the appropriate application fee; and
23 (3) holds a valid license, registration, identification, or similar card
24 issued by a state that

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

27 (B) is determined by the department to have selection, training,
28 and other requirements at least as stringent as those required by this chapter.

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

1 under this chapter.

2 (b) The license cards shall bear the name, license number, class of license,
3 photograph, signature, and identifying data of the licensee, and the signature of the
4 commissioner.

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

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

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

13 **Sec. 08.85.220. Private investigator agency certificate.** (a) A person may not
14 operate a private investigator agency without a private investigator agency certificate
15 issued under this section.

16 (b) The department shall issue to each private investigator agency that
17 qualifies under this section a certificate bearing the name of each of the agency's
18 licensees, the license numbers, the business name under which the agency is operating,
19 the authorized operating location of the business, the expiration date, and the signature
20 of the commissioner. An individual is not eligible for a certificate unless the individual
21 holds a class A license under this chapter. A partnership is not eligible for a certificate
22 unless each partner holds a class A license under this chapter. A corporation is not
23 eligible for a certificate unless the chief executive officer holds a class A license under
24 this chapter. To qualify for a certificate, the agency shall provide evidence satisfactory
25 to the department of the agency's possession of

26 (1) a current business license issued by the department and a municipal
27 license, if required; and

28 (2) either

29 (A) errors and omissions insurance of \$100,000 or more; or

30 (B) possession of a corporate surety bond for not less than

31 \$15,000.

1 (c) A private investigator agency certificate holder

2 (1) shall post and display the certificate in a conspicuous place in the
3 principal office of the certificate holder in the state;

4 (2) may not post the certificate on premises other than those described
5 in the certificate;

6 (3) may not materially alter a certificate;

7 (4) shall include the agency's certificate number in any advertisement
8 by the agency; and

9 (5) shall notify the department within 30 days after a change in the
10 agency's officers, directors, or partners, or a material change in the information
11 furnished to the department.

12 (d) A certificate issued under this section may not be assigned or transferred
13 without prior written approval of the department.

14 (e) A person who knowingly violates (a) or (c) of this section is guilty of a
15 class A misdemeanor.

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

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

25 (c) If a licensee fails to pay the renewal fee, with accrued penalty, within 30
26 days after the renewal date, the license terminates. The person may reapply under
27 AS 08.85.150.

28 (d) Before renewing a license, the department may request criminal history
29 information from the Department of Public Safety. Every third time a licensee applies
30 for renewal, the department shall require the licensee to submit the fingerprints and
31 fees required by AS 12.62.160 for criminal justice information and a national criminal

1 history record check. The department may not renew the license of a licensee who
2 does not meet the requirements of AS 08.85.120.

3 **Sec. 08.85.240. Confidentiality of licensee's personal identifying**
4 **information.** A licensee's residential address, residential telephone number, electronic
5 mail address, social security number, photograph, and other personal identifying
6 information that is disclosed under AS 08.85.160 is required to be kept confidential
7 and is not subject to disclosure under AS 40.25.110 - 40.25.220 unless written consent
8 is provided by the licensee.

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

1 as to the underlying charges, and the department shall allow the individual being
2 disciplined or denied a license under this chapter to present any mitigating evidence
3 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 holding a certificate 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 who performs investigations solely in connection with the affairs of that
24 employer if the employer is not a private investigator agency;

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 the attorney's 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 it claims
14 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 member or employee of the news media, while engaged in
23 obtaining information for the purposes of disseminating news to the public;

24 (13) a person who has a private investigator license or the equivalent
25 from another jurisdiction who

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

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

30 (C) demonstrates to the satisfaction of the department that the
31 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;

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

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

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

(17) 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:

(16) 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:

(49) 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, 2014, was licensed as a private investigator or private investigator agency by a political subdivision of this state or who, before July 1, 2014, held a current business license from the state for a private investigator business shall be issued a private investigator class A license by the department if the person

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

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

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

6 (4) pays the required fees.

7 (b) A person who does not meet the requirements of (a) of this section and, before
8 July 1, 2014, was a private investigator employed by a person who satisfied the requirements
9 of (a) of this section shall be issued a private investigator class B license by the department if
10 the person

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

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

14 (3) pays the required fees.

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

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

19 * **Sec. 6.** This Act takes effect July 1, 2014.