

HOUSE BILL NO. 158

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES ROSES, Gruenberg

Introduced: 2/28/07

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act providing for the licensing and regulation of private investigators and private**
2 **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 (39) Board of Private Investigators (AS 08.85).

6 *** Sec. 2.** AS 08.03.010(c) is amended by adding a new paragraph to read:

7 (23) Board of Private Investigators (AS 08.85.010) - June 30, 2010.

8 *** Sec. 3.** AS 08 is amended by adding a new chapter to read:

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

10 **Article 1. Board of Private Investigators.**

11 **Sec. 08.85.010. Board established.** There is established the Board of Private
12 Investigators. The board consists of five members appointed by the governor as
13 follows:

14 (1) two individuals who are licensed as private investigators under this

1 chapter and who have at least five years of experience in this state as a private
2 investigator;

3 (2) one state and one local peace officer; and

4 (3) one public member.

5 **Sec. 08.85.020. General duties.** In addition to the powers and duties conferred
6 on the board by AS 08.01, the board shall

7 (1) regulate private investigators and private investigator agencies
8 under this chapter;

9 (2) adopt regulations to implement this chapter, including regulations
10 that establish

11 (A) standards of professional conduct or practice for private
12 investigators licensed under, and private investigator agencies holding
13 certificates under, this chapter; and

14 (B) continuing education requirements that must be met before
15 renewal of a license issued under this chapter.

16 **Sec. 08.85.030. Investigation of applicants.** (a) When investigating an
17 applicant for licensure or a certificate under this chapter, the department may require
18 any information and documentation that reasonably relates to the need to determine
19 whether the applicant meets the criteria for a license or certificate. During the
20 investigation, the department shall solicit comments about the applicant from the chief
21 law enforcement officer of the municipality in which the applicant or the applicant's
22 agency or employer is located. The department shall also request the Department of
23 Public Safety to compare the fingerprints submitted with an application to national and
24 state fingerprint records available under AS 12.62.

25 (b) The board may, by regulation, require that fingerprints of licensees be
26 periodically reprocessed to identify criminal convictions subsequent to licensure under
27 this chapter.

28 (c) A summary of the information acquired under this section, to the extent
29 that it is public information, may be forwarded by the department or the board to an
30 applicant's employer.

31 **Sec. 08.85.040. Immunity for complainants.** An action may not be brought

1 against a person for damages resulting from a complaint filed in good faith with the
 2 board or the department about a person licensed a holding or certificate under this
 3 chapter.

4 **Sec. 08.85.050. Fees.** Under AS 08.01.065, the department shall establish fees
 5 for private investigators and private investigator agencies for the following:

- 6 (1) filing an examination or licensing application;
- 7 (2) examination fee;
- 8 (3) investigation of application;
- 9 (4) initial license;
- 10 (5) filing a reexamination application;
- 11 (6) duplicate license;
- 12 (7) license certificate;
- 13 (8) license card;
- 14 (9) renewal of a license;
- 15 (10) delinquent renewal of a license;
- 16 (11) fingerprint investigation;
- 17 (12) review of an application under AS 08.85.120.

18 **Sec. 08.85.060. Administrative Procedure Act.** Regulations and proceedings
 19 under this chapter are governed by AS 44.62 (Administrative Procedure Act).

20 **Article 2. Private Investigators and Private Investigator Agencies.**

21 **Sec. 08.85.100. License and certificate required.** (a) Unless a person is
 22 licensed under this chapter or is exempt from licensure under AS 08.85.800, a person
 23 may not

- 24 (1) perform the functions and duties of a private investigator;
- 25 (2) act in a manner intended to convey the impression that the person
 26 is a private investigator;
- 27 (3) act in a manner that may reasonably be construed as performance
 28 the functions and duties of a private investigator; or
- 29 (4) advertise to the public in the media as being engaged in performing
 30 or as qualified to perform the functions and duties of a private investigator in this
 31 state.

1 (b) Unless exempt under AS 08.85.800, a person may not

2 (1) perform the functions and duties of a private investigator unless the
3 person is, or is employed by, a person holding a private investigator agency certificate
4 issued under this chapter;

5 (2) operate a private investigator agency without a private investigator
6 agency certificate issued under this chapter.

7 (c) A person who knowingly violates this section is guilty of a class A
8 misdemeanor.

9 **Sec. 08.85.110. General requirements for private investigators.** To obtain a
10 class A or class B private investigator license an applicant

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

12 (2) may not have been convicted of a felony in any jurisdiction in the
13 10 years preceding license application;

14 (3) may not have been convicted of a crime of dishonesty or sexual
15 misconduct, as defined by the board in any jurisdiction that the board determines

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

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

20 (4) may not be on probation, parole, or named on an outstanding arrest
21 warrant;

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

24 (6) may not have been declared by a court of competent jurisdiction to
25 be incompetent by reason of mental disease or defect unless a court has since declared
26 the person to be competent; and

27 (7) may not be currently employed

28 (A) as a peace officer;

29 (B) by an agency of the United States, or of a state or local
30 government, if the position held involves the enforcement of law or provides
31 access to police or intelligence information or files generally considered to be

1 restricted to law enforcement or investigative personnel only; or

2 (C) in a position that, in the judgment of the board, represents a
3 conflict of interest for the prospective licensee.

4 **Sec. 08.85.120. Classes of license.** (a) The board shall issue a class A license
5 under this chapter to an individual who qualifies under AS 08.85.110 and 08.85.130.
6 A class A license entitles an individual to operate a private investigator agency as an
7 individual, partner, or chief executive officer of a corporation.

8 (b) The department shall issue a class B license under this chapter to an
9 individual who qualifies under AS 08.85.110 and 08.85.140. A class B license entitles
10 an individual to be employed by a private investigator agency to perform private
11 investigations.

12 **Sec. 08.85.130. Private investigator class A license; qualifications.** (a) The
13 board shall issue a private investigator class A license to an applicant who, in addition
14 to meeting the requirements of AS 08.85.110,

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

16 (2) passes a written examination as required by the department;

17 (3) pays the required fee; and

18 (4) has provided evidence satisfactory to the board of work experience
19 and education or their equivalent of one of the following;

20 (A) a high school diploma and three or more years experience
21 in investigative work;

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

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

27 (b) In this section, a year's experience means 1,500 hours or more of actual
28 compensated work performed before the filing of an application. An applicant shall
29 substantiate the experience by providing written certifications from previous
30 employers. If an applicant is unable to supply written certifications from previous
31 employers, an applicant may offer written certifications from people other than

1 employers who, based on personal knowledge, can substantiate the applicant's
2 employment.

3 **Sec. 08.85.140. Private investigator class B license; qualifications.** The
4 board shall issue a class B license under this chapter to an applicant who, in addition
5 to meeting the general requirements of AS 08.85.110,

- 6 (1) is 18 years of age or older;
- 7 (2) has a high school diploma or equivalent;
- 8 (3) pays the required fee; and
- 9 (4) is employed by or has an offer of employment from a private
10 investigator agency licensed under this chapter.

11 **Sec. 08.85.150. License application.** (a) An application for a license under
12 this chapter shall be submitted to the department on a form and in a manner provided
13 by the department.

- 14 (b) An application must include the following information about an applicant:
- 15 (1) the applicant's full name;
- 16 (2) the applicant's business name;
- 17 (3) the applicant's residence address;
- 18 (4) the applicant's residential telephone number;
- 19 (5) the applicant's residential mailing address;
- 20 (6) the applicant's residence history for the five years immediately
21 preceeding the application;
- 22 (7) the applicant's business address;
- 23 (8) the applicant's business telephone number;
- 24 (9) the applicant's sex;
- 25 (10) the applicant's height and weight;
- 26 (11) the applicant's hair and eye color;
- 27 (12) the applicant's date of birth;
- 28 (13) the applicant's social security number;
- 29 (14) the applicant's Alaska driver's license number and expiration date;
- 30 (15) the applicant's citizenship;
- 31 (16) the applicant's criminal history and conviction record;

1 (17) the applicant's employment history for the five-year period
2 preceding the date of application, including reasons for termination and the applicant's
3 eligibility for rehire;

4 (18) the name and address of all business entities in which the
5 applicant or the applicant's spouse has a vested interest.

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

7 (1) sworn statement that the applicant is free from any mental or
8 emotional disorder that may adversely affect the applicant's performance as a private
9 investigator;

10 (2) sworn statement that the applicant has read and understands
11 AS 08.85.100 - 08.85.900;

12 (3) sworn statement that the information contained in the application is
13 true; and

14 (4) notarized signature.

15 (d) The applicant shall submit with the application

16 (1) two complete fingerprint cards containing fingerprints and other
17 information required by the Department of Public Safety to obtain state and national
18 criminal history record information under AS 12.62 and AS 12.64;

19 (2) a fee payable to the department for fingerprint processing and for a
20 national criminal history record check under AS 12.62.400;

21 (3) two photographs of the applicant suitable for a passport;

22 (4) letters of recommendation from three reputable citizens, at least
23 one of whom is a resident of the state, attesting to the good character of the applicant;
24 and

25 (5) documentation required by the board to substantiate that the
26 applicant meets the applicable requirements of this chapter.

27 (e) On receipt of an application for a license, the department shall conduct an
28 investigation to determine whether the facts set out in the application are accurate. On
29 completion of its investigation, the department shall submit the results with the
30 completed application packet to the Department of Public Safety for review and final
31 determination. As part of its review, the Department of Public Safety may conduct an

1 interview with the applicant.

2 **Sec. 08.85.200. Reciprocal licensure.** The board may grant a private
3 investigator license class A or B under this chapter to a person who

4 (1) applies on a form prescribed by the board;

5 (2) pays the appropriate application fee; and

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

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

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

12 **Sec. 08.85.300. License cards.** (a) The board shall issue a class A license card
13 to each individual licensed as a class A private investigator under this chapter and a
14 class B license card to each individual licensed as a class B private investigator under
15 this chapter.

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

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

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

25 (e) In the event of loss or destruction of a license card, the licensee may apply
26 to the department for a replacement card, stating the circumstances of the loss.

27 **Sec. 08.85.400. Private investigator agency certificate.** (a) The department
28 shall issue to each private investigator agency that qualifies under this section a
29 certificate bearing the name or names of the agency's licensees, the license numbers,
30 the business name under which the agency is operating, the authorized operating
31 location of the business, the expiration date, and the signature of the commissioner.

1 An individual is not eligible for a certificate unless the individual holds a class A
 2 license under this chapter. A partnership is not eligible for a certificate unless each
 3 partner holds a class A license under this chapter. A corporation is not eligible for a
 4 certificate unless the chief executive officer holds a class A license under this chapter.
 5 To qualify for a certificate, the agency shall provide evidence satisfactory to the board
 6 of the agency's possession of

7 (1) a surety bond issued by a corporation in the amount of \$15,000 or
 8 more;

9 (2) errors and omissions insurance of \$100,000 or more; and

10 (3) a current business license issued by the department and a municipal
 11 or borough license, if required.

12 (b) A private investigator agency certificate holder

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

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

17 (3) may not materially alter a certificate;

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

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

23 (c) A certificate issued under this section may not be assigned or transferred
 24 without prior written approval of the department.

25 (d) A person who knowingly violates (b) of this section is guilty of a class A
 26 misdemeanor.

27 **Sec. 08.85.500. License renewal; nontransferability.** (a) A license issued
 28 under this chapter is nontransferable and, unless revoked or suspended, may be
 29 renewed on a date set by the board upon proof of the licensee's continued competency.

30 (b) A licensee shall apply for renewal and pay the renewal fee as established
 31 by the board on or before the renewal date of the license. A licensee who fails to pay

1 the renewal fee by the renewal date set by the board may, within 30 days, pay the
2 renewal fee plus a penalty in an amount to be established by the board, not to exceed
3 twice the amount of the renewal fee.

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

7 (d) Before renewing a license, the department may request criminal history
8 information from the Department of Public Safety. The department may not renew the
9 license of a licensee who does not meet the requirements of AS 08.85.110 for a license
10 application.

11 **Sec. 08.85.550. Continuing education.** (a) A class A licensee under this
12 chapter shall complete 20 hours or more of education every two years.

13 (b) When a class A licensee applies for a license renewal under AS 08.85.500,
14 the licensee shall provide proof satisfactory to the department of having completed the
15 education requirements under this section.

16 (c) Continuing education requirements shall be established by the board under
17 AS 08.85.020.

18 **Sec. 08.85.600. Confidentiality of licensee's personal identifying**
19 **information.** A licensee's residential address, residential telephone number, electronic
20 mail address, social security number, photograph, and other personal identifying
21 information that is disclosed under AS 08.85.150 is required to be kept confidential
22 and is not subject to disclosure under AS 40.25.110 - 40.25.220 unless written consent
23 is provided by the licensee.

24 **Sec. 08.85.700. Prohibited practices.** The following acts by a person licensed
25 under this chapter are prohibited and constitute grounds for disciplinary action under
26 AS 08.01.075 or denial of a license under this chapter, as determined by the
27 department:

28 (1) knowingly violating a provision of this chapter or a regulation
29 adopted under this chapter;

30 (2) accepting employment that the licensee under this chapter knows to
31 include gathering information intended for illegal purposes;

1 (3) knowingly making a material misstatement or omission in the
2 application for or renewal of a license, including falsifying requested identification
3 information;

4 (4) causing another person to reasonably believe that the private
5 investigator is an agent or employee of the state, the United States, or a political
6 subdivision of the state or United States by

7 (A) wearing a uniform or presenting or displaying a badge or
8 credentials that would cause a reasonable person to believe that the person has
9 official authority as a state, federal, or municipal representative or law
10 enforcement officer

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

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

14 (5) conviction of a crime that directly relates to the business for which
15 the license is held or sought, regardless of whether a sentence was suspended; a
16 conviction based on a plea of nolo contendere creates a rebuttable presumption of guilt
17 as to the underlying charges, and the department shall allow the individual being
18 disciplined or denied a license under this chapter to present any mitigating evidence
19 relevant to the reason for or circumstances surrounding the plea;

20 (6) soliciting business for an attorney in return for compensation;

21 (7) failure to cooperate with the board or the department by

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

25 (B) not furnishing in writing a full and complete explanation
26 covering the matter contained in a complaint filed with the department or the
27 board; or

28 (C) not responding to a subpoena issued by the board or
29 department, regardless of whether the recipient of the subpoena is the accused
30 in the proceeding; or

31 (8) failure to comply with an order issued by the board or department.

1 **Article 3. General Provisions.**

2 **Sec. 08.85.800. Exemptions.** The licensing requirements of this chapter do not
3 apply to

4 (1) a person who is employed exclusively or regularly by one
5 employer who performs investigations solely in connection with the affairs of that
6 employer if the employer is not a private investigator agency;

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

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

12 (4) an attorney, while performing the attorney's duties as an attorney;

13 (5) a licensed collection agency or its employee, while acting within
14 the scope of that person's employment and making an investigation incidental to the
15 business of the agency;

16 (6) an insurer, insurance agent, or insurance broker licensed by the
17 state, while performing duties in connection with insurance transacted by the insurer,
18 insurance agent, or insurance broker;

19 (7) a bank subject to the jurisdiction of the department or the United
20 States Comptroller of the Currency, or a savings and loan association subject to the
21 jurisdiction of this state or the Federal Home Loan Bank Board;

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

24 (9) a secured creditor engaged in the repossession of the creditor's
25 collateral or a lessor engaged in the repossession of leased property in which it claims
26 an interest;

27 (10) a person who is a forensic scientist or an accident
28 reconstructionist or who performs similar functions and who does not hold out to be
29 an investigator in any other capacity;

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

1 (12) a member or employee of the news media, while engaged in
2 obtaining information for the purposes of disseminating news to the public;

3 (13) a person who has a private investigator license or the equivalent
4 from another jurisdiction who performs private investigation in this state for less than
5 30 days a calendar year and demonstrates to the satisfaction of the department that

6 (A) the licensure requirements of the other jurisdiction are at
7 least as restrictive as this state's requirements; and

8 (B) the other jurisdiction allows licensees from this state to
9 operate in the other jurisdiction;

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

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

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

16 **Sec. 08.85.900. Definitions.** In this chapter,

17 (1) "board" means the Board of Private Investigators established under
18 this chapter;

19 (2) "commissioner" means the commissioner of commerce,
20 community, and economic development;

21 (3) "department" means the Department of Commerce, Community,
22 and Economic Development;

23 (4) "forensic scientist" or "accident reconstructionist" means a person
24 engaged exclusively in collecting and analyzing physical evidence and data relating to
25 an accident or other matter and compiling the evidence or data to render an opinion of
26 likely cause, fault, or circumstance of the accident or matter;

27 (5) "perform the functions and duties of a private investigator" means
28 to engage in business or accept employment to furnish, agree to conduct, or conduct
29 an investigation for the purpose of obtaining information about

30 (A) criminal offenses;

31 (B) the identity, habits, conduct, business, occupation, honesty,

1 integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity,
 2 movement, whereabouts, affiliations, associations, transactions, acts,
 3 reputation, or character of a person, entity, or thing;

4 (C) the location, disposition, or recovery of lost or stolen
 5 property;

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

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

10 (F) detecting the presence of electronic eavesdropping devices;

11 or

12 (G) the truth or falsity of a statement or representation;

13 (6) "private investigator" means a person who performs the functions
 14 and duties of a private investigator.

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

16 (47) Board of Private Investigators.

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

19 TRANSITIONAL PROVISIONS. (a) An individual who, before July 1, 2008, was
 20 validly licensed as a private investigator or private investigator agency by a political
 21 subdivision of this state or who, before July 1, 2008, held a current and active business license
 22 from the state for a private investigator business shall be issued a private investigator class A
 23 license by the board if the person

24 (1) meets the qualifications of AS 08.85.110, enacted by sec. 3 of this Act;

25 (2) provides evidence satisfactory to the board that the person has performed
 26 1,500 hours or more of private investigation work in the business for which the person holds a
 27 license;

28 (3) completes the application process required under AS 08.85.150, enacted
 29 by sec. 3 of this Act; and

30 (4) pays the required fees.

31 (b) A person who does not meet the requirements of (a) of this section and, before

1 July 1, 2008, was a private investigator employed by a person who satisfied the requirements
2 of (a) of this section shall be issued a private investigator class B license by the board if the
3 person

4 (1) meets the qualifications of AS 08.85.110, enacted by sec. 3 of this Act;

5 (2) completes the application process required under AS 08.85.150, enacted
6 by sec. 3 of this Act; and

7 (3) pays the required fees.

8 (c) A person licensed under this section shall comply with license renewal
9 requirements under AS 08.85.500, added by sec. 3 of this Act.

10 (d) In this section, "board" means the Board of Private Investigators established under
11 sec. 3 of this Act.

12 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

14 REGULATIONS. The Department of Commerce, Community, and Economic
15 Development may proceed to adopt regulations to implement this Act. A regulation adopted
16 under the authority of this section takes effect under AS 44.62 (Administrative Procedure Act)
17 but not before the effective date of the law implemented by the regulation.

18 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to
19 read:

20 INITIAL BOARD MEMBERS. Notwithstanding AS 08.85.010, enacted by sec. 3 of
21 this Act, the persons appointed to the Board of Private Investigators to fill the seats designated
22 for private investigators or private investigative agencies licensed in this state are not required
23 to be licensed in this state at the time of appointment, but must be eligible for licensure under
24 AS 08.85.110 and 08.85.130, as enacted by sec. 3 of this Act.

25 * **Sec. 8.** Except as provided in sec. 9 of this Act, this Act takes effect immediately under
26 AS 01.10.070(c).

27 * **Sec. 9.** AS 08.85.100 and 08.85.400, enacted by sec. 3 of this Act, take effect July 1,
28 2008.