

HOUSE BILL NO. 253

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE HUGHES

Introduced: 1/17/14

Referred: Prefiled

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) 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 08.85.310.

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

13 (c) A person may not practice as a private investigator unless the person holds
14 a private investigator agency certificate or is employed by a private investigator

1 agency.

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

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

7 (1) criminal offenses;

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

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

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

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

17 (6) the presence of electronic eavesdropping devices; or

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

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

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

22 (2) may not have been convicted of a felony in any jurisdiction in the
23 10 years preceding license application;

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

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

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

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

1 warrant;

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

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

7 (7) may not be currently employed

8 (A) as a peace officer;

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

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

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

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

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

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

27 (2) pays the required fee; and

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

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

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

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

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

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

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

17 (2) pays the required fee;

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

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

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

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

25 (1) the applicant's full name;

26 (2) the applicant's business name;

27 (3) the applicant's residence address;

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

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

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

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

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

- 17 (1) statement that the applicant is free from any mental illness or
- 18 disability that may adversely affect the applicant's performance as a private
- 19 investigator;
- 20 (2) statement that the applicant has read and understands AS 08.85.100
- 21 - 08.85.320;
- 22 (3) statement that the information contained in the application is true;
- 23 and
- 24 (4) notarized signature.

25 (d) The applicant shall submit with the application

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

1 department;

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

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

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

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

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

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

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

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

23 (2) pays the appropriate application fee; and

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

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

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

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

1 a class B license card to each individual licensed as a class B private investigator
2 under this chapter.

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

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

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

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

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

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

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

29 (2) either

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

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

1 \$15,000.

2 (c) A private investigator agency certificate holder

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

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

7 (3) may not materially alter a certificate;

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

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

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

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

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

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

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

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

1 fees required by AS 12.62.160 for criminal justice information and a national criminal
 2 history record check. The department may not renew the license of a licensee who
 3 does not meet the requirements of AS 08.85.120.

4 **Sec. 08.85.240. Firearms training.** A licensee may not carry a firearm while
 5 practicing as a private investigator until the licensee has completed firearms training
 6 acceptable to the department.

7 **Sec. 08.85.250. Confidentiality of licensee's personal identifying**
 8 **information.** A licensee's residential address, residential telephone number, electronic
 9 mail address, social security number, photograph, and other personal identifying
 10 information that is disclosed under AS 08.85.160 is required to be kept confidential
 11 and is not subject to disclosure under AS 40.25.110 - 40.25.220 unless written consent
 12 is provided by the licensee.

13 **Sec. 08.85.260. Prohibited practices.** The department may impose the
 14 disciplinary sanctions authorized for boards under AS 08.01.075 or refuse to issue a
 15 license under this chapter when it finds that the licensee or the applicant

16 (1) knowingly violated a provision of this chapter or a regulation
 17 adopted under this chapter;

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

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

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

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

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

31 (C) committing an act or making a statement intended to

1 convey official status;

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

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

9 (7) failed to cooperate with the department by

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

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

15 (C) not responding to a subpoena issued by the department,
16 regardless of whether the recipient of the subpoena is the accused in the
17 proceeding; or

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

19 **Sec. 08.85.270. Immunity for complainants.** An action may not be brought
20 against a person for damages resulting from a complaint filed in good faith with the
21 department about a person licensed or holding a certificate under this chapter.

22 **Sec. 08.85.280. Administrative Procedure Act.** AS 44.62 (Administrative
23 Procedure Act) governs regulations and proceedings under this chapter.

24 **Sec. 08.85.310. Exemptions.** The licensing requirements of this chapter do not
25 apply to

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

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

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

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

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

7 (6) an insurer, insurance agent, or insurance broker licensed by the
8 state, while performing duties in connection with insurance transacted by the insurer,
9 insurance agent, or insurance broker;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 **Sec. 08.85.320. Definitions.** In this chapter,

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

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

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

21 (16) licensure as a private investigator under AS 08.85.

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

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

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

28 **TRANSITIONAL PROVISIONS.** (a) An individual who, before July 1, 2014, was
29 licensed as a private investigator or private investigator agency by a political subdivision of
30 this state or who, before July 1, 2014, held a current business license from the state for a
31 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, 2014, 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, 2014.