

HOUSE BILL REPORT

HB 1181

*As Reported By House Committee on:
Commerce & Labor*

Title: An act relating to private detective agencies and private detectives.

Brief Description: Licensing private detectives.

Sponsor(s): Representatives Cole, Heavey, Jacobsen, R. King, Zellinsky, Jones, Prentice, Vance, Rayburn, Franklin, Scott, Wood, Bowman, Neher, Van Luven, Appelwick and Riley.

Brief History:

Reported by House Committee on:
Commerce & Labor, February 26, 1991, DPS.

**HOUSE COMMITTEE ON
COMMERCE & LABOR**

Majority Report: *That Substitute House Bill No. 1181 be substituted therefor, and the substitute bill do pass.*
Signed by 11 members: Representatives Heavey, Chair; Cole, Vice Chair; Fuhrman, Ranking Minority Member; Lisk, Assistant Ranking Minority Member; Franklin; Jones; R. King; O'Brien; Prentice; Vance; and Wilson.

Staff: Jim Kelley (786-7166).

Background: Various proposals to regulate private detectives on a statewide basis have existed for the past decade. Some industry and law enforcement representatives have expressed the following concerns with the current system of local regulation:

- 1) consumers are not assured of competent practitioners who are able to provide the services contracted for;
- 2) private detective agencies cannot be assured that the individuals they hire are free of a criminal history that may pose a threat to public health and safety, unless the agencies request and pay for their own background checks of applicants; and
- 3) existing local regulation, to the extent it exists, places an unfair burden on private detective agencies in some localities and is inadequate in others.

In 1988, the Department of Licensing conducted a sunrise review of the private investigator and private security guard industries at the written request of the chair of the House Committee on Commerce and Labor. As a result of the sunrise review, the department made the following recommendations regarding private investigators:

- 1) that no state licensing of private investigators be required at this time; and
- 2) that the Legislature undertake a separate review of existing statute law to safeguard the public against abuse or erosion of their civil rights by private investigators.

The sunrise review concluded that there is a need for regulation but that the establishment and enforcement of standards, at this time, can be addressed at the local level.

Summary of Substitute Bill: A uniform statewide licensing scheme is established for private detectives and private detective agencies, to be administered by the Department of Licensing.

Requirements for Obtaining a License:

To obtain a license as a private detective a person must: be at least 18 years of age; be a United States citizen or a resident alien; not have been convicted in the last 10 years of a crime that is related to the duties of a private detective; be employed by or have an employment offer from a private detective agency or be licensed as a private detective agency; satisfy the training requirements; submit a set of fingerprints; and pay the required fee.

To obtain an armed private detective license, a person must be licensed as a private detective, be at least 21 years old and have a current firearms certificate issued by the Criminal Justice Training Commission.

To obtain a license as a private detective agency a person must be 21 years old and pass an examination or have had at least three years' experience as a supervisor in the private security business.

Licenses:

After receiving an application for a license, the director will conduct a background investigation of the applicant, including fingerprint comparison. The director will issue a license card to each licensed detective and armed detective.

The card may not be used as security clearance or identification and must be carried whenever the detective is working.

The director will issue a license certificate to each licensed private detective agency. The certificate must be posted at the premises described in the license. Any advertisement must contain the name of the licensee, the address of record, and the license number.

Training:

The director of the Department of Licensing will adopt rules establishing preassignment training requirements, and the procedure for obtaining and renewing all licenses under this chapter. Preassignment training will include at least four hours of classes. Firearms training will be administered by the Criminal Justice Training Commission.

Reciprocity:

A private detective who changes his or her permanent residence to this State from another state with equivalent certification requirements may become licensed upon the payment of a processing fee. A valid license issued by another state is valid in this State for 90 days if the licensee is on temporary assignment for the same employer that employs the licensee in his or her home state. Private detectives whose duties require them to operate across state lines may operate in this State if the director determines that the state that licensed the detective has training, insurance and certification requirements at least equal to this State.

Insurance:

A private detective agency must post a \$1,000 bond or, in lieu of a bond, a private detective agency may carry comprehensive general liability insurance of at least \$25,000 for bodily injury and \$25,000 for property damage.

Unlawful Acts:

It is a gross misdemeanor for a person to act as a private detective or an armed private detective, or to own or operate a private detective agency without a license. A private detective commits a gross misdemeanor if he or she:

- 1) attempts to use the license of another;
- 2) gives false or forged evidence to the director in obtaining a license;

- 3) falsely impersonates another licensee;
- 4) attempts to use an expired or revoked license; or
- 5) violates any of the provisions of this chapter.

Grounds for Discipline or Denial or Revocation of a License:

There are 19 prohibited acts that are grounds for disciplinary action or denial, suspension or revocation of a license:

- 1) knowingly violating any provision of this chapter;
- 2) knowingly making a material misstatement in the application process;
- 3) not meeting the qualifications of this chapter;
- 4) failing to return a firearm immediately upon demand;
- 5) carrying a firearm without a valid armed private detective license or carrying a firearm not meeting the provisions of this chapter;
- 6) failing to return company identification or a badge immediately on demand;
- 7) making a statement that would reasonably cause another person to believe that he or she is a police officer;
- 8) divulging confidential information that may compromise the security of any premises to which he or she was assigned;
- 9) conviction of a gross misdemeanor or felony or any act involving moral turpitude, dishonesty, or corruption;
- 10) false, fraudulent, or misleading advertising;
- 11) incompetence or negligence that results in or creates an unreasonable risk of injury to a person;
- 12) suspension, revocation, or restriction of the individual's license to practice by competent authority in any state, federal, or foreign jurisdiction;
- 13) violation of any state or federal statute or administrative rule regulating the profession;

- 14) failure to cooperate with the director in an investigation;
- 15) failure to comply with an order of the director;
- 16) aiding or abetting unlicensed practice;
- 17) misrepresentation or fraud in any aspect of the conduct of the business or practice;
- 18) failure to adequately supervise employees so that the public health or safety is at risk; or
- 19) willful misrepresentation of facts before the director or using threats or harassment against a client or witness in an investigation or disciplinary proceeding.

A license issued pursuant to this chapter may not be assigned or transferred.

Director's Authority:

The director is given authority to: amend and rescind rules; issue subpoenas and administer oaths; take depositions; compel attendance of witnesses; conduct practice reviews; order summary suspension in emergencies; use the office of administrative hearings; enter into contracts for professional services; adopt standards of professional conduct; impose sanctions for unprofessional conduct; enter into an assurance of discontinuance in lieu of issuing a statement of charges or conducting a hearing; and compel attendance of witnesses at hearings.

The director may enforce the payment of unpaid fines in superior court.

Civil Action:

Any person or governmental agency may maintain an action to enjoin any unlicensed person from continuing to engage in the profession. A civil penalty of up to \$25,000 may be imposed on a person that violates an injunction.

Medical Examinations:

If the director has reason to believe that a licensee or applicant may be unable to safely perform the job of a security guard because of a mental or physical condition, the director may order the licensee or applicant to submit to a medical examination as a condition of licensure.

Immunity from Suit:

The director and individuals acting on the director's behalf are immune from suit based on official acts performed in the course of their duties under this chapter.

Substitute Bill Compared to Original Bill: New definitions are added for "commission," "person" and "employer."

Many violations of this chapter are made gross misdemeanors, including: unlicensed practice; using the license of another; using false or forged evidence to obtain a license; falsely impersonating a licensee; using an expired or revoked license.

A number of acts constituting a violation of the chapter are added, including:

- 1) knowingly violating any provision of the act;
- 2) not meeting the qualifications of the act;
- 3) failure to return a firearm immediately on demand;
- 4) carrying a firearm if not the holder of an armed private detective license;
- 5) failure to return company identification, badges, or other items immediately on demand;
- 6) making a statement that would reasonably cause another person to believe that the private detective is a sworn peace officer;
- 7) divulging confidential information;
- 8) conviction of a gross misdemeanor or felony or the commission of any act involving moral turpitude, dishonesty, or corruption;
- 9) incompetence or negligence that results in or creates an unreasonable risk of injury to a person;
- 10) failure to cooperate with the director;
- 11) failure to adequately supervise employees, placing the public safety at risk; and
- 12) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts.

The requirements for obtaining a license include not having been convicted within the past 10 years of any crime that is

directly related to the applicant's capacity to perform the duties of a private detective.

An applicant who does not have an employment offer as a private detective may obtain a license if he or she is licensed as a private detective agency.

The minimum age for obtaining an armed private detective license is increased from 18 to 21 years of age.

No particular type of firearm is required for armed private detectives. Firearms must be registered.

An out-of-state applicant may obtain a license if he or she is licensed in another state that has requirements at least equal to those required by this chapter.

The director's authority is expanded to include the authority to: amend and rescind rules; issue subpoenas and administer oaths; take depositions; compel attendance of witnesses; conduct practice reviews; order summary suspension in emergencies; use the office of administrative hearings; enter into contracts for professional services; adopt standards of professional conduct; impose sanctions for unprofessional conduct; enter into an assurance of discontinuance in lieu of issuing a statement of charges or conducting a hearing; and compel attendance of witnesses at hearings.

The director may conduct hearings and order mental or physical examinations to determine the mental or physical capacity of an applicant or license holder.

The director may enforce the payment of unpaid fines in superior court.

Any person or governmental agency may maintain an action to enjoin any unlicensed person from continuing to engage in the profession. A civil penalty of up to \$25,000 may be imposed on a person that violates an injunction.

The director and individuals acting on the director's behalf are immune from suit based on official acts performed in the course of their duties under this chapter.

Fiscal Note: Available.

Appropriation: Yes, generated by fees.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: (original bill): This is a consumer protection bill. People have a false sense of security when they hire private detectives. Detectives are perceived by the public as police officers. We need to find out more about these people before they are placed in a position of trust.

Testimony Against: (original bill): This is setting up the state against local law enforcement and private detectives and it may cause resentment. The insurance and bond requirements are too low. The bill needs major changes to satisfy the department.

Witnesses: Steve Lindstrom, Industry (in favor); Jeff Kirby, Washington State Security Council (in favor); Bob Bourgoin, Northwest Protective (in favor); James Lonsbery, Loomis Armored (in favor); Rich Morton, Morton Investigations (in favor); Jim Scott, Criminal Justice Training Commission (in favor); Captain Tim Erickson, Washington State Patrol (in favor); John Keith, Department of Licensing (in favor); and Tony Sexton, Private Investigator (opposed).