

HOUSE BILL NO. 354
INTRODUCED BY B. GLASER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS GOVERNING LICENSURE OF PRIVATE INVESTIGATORS; ELIMINATING THE DEFINITION OF AND REFERENCES TO FIRE INVESTIGATORS IN LAWS GOVERNING PRIVATE INVESTIGATORS AND PRIVATE SECURITY AND ELIMINATING THE NEED FOR A SEPARATE FIRE INVESTIGATION LICENSE; INCLUDING INVESTIGATION OF FIRES AMONG A LICENSED PRIVATE INVESTIGATOR'S ACTIVITIES; EXEMPTING CERTAIN FORENSIC PRACTICES FROM LICENSE REQUIREMENTS; AND AMENDING SECTIONS 37-60-101, 37-60-103, 37-60-105, 37-60-301, AND 37-60-304, MCA."

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

Section 1. Section 37-60-101, MCA, is amended to read:

"37-60-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Alarm response runner" means an individual employed by an electronic security company, a contract security company, or a proprietary security organization to respond to security alarm system signals.

(2) "Armed" means an individual who at any time wears, carries, or possesses a firearm in the performance of professional duties.

(3) "Armed carrier service" means any person or security company who transports or offers to transport under armed private security guard from one place to another any currency, documents, papers, maps, stocks, bonds, checks, or other items of value that require expeditious delivery.

(4) "Armed private investigator" means a private investigator who at any time wears, carries, or possesses a firearm in the performance of the individual's duties.

(5) "Armed private security guard" means an individual employed by a contract security company or a proprietary security organization whose duty or any portion of whose duty is that of a security guard, armored car service guard, or carrier service guard and who at any time wears or carries a firearm in the performance of the individual's duties.

(6) "Armored car service" means any person or security company who transports or offers to transport under armed private security guard from one place to another any currency, jewels, stocks, bonds, paintings, or other valuables of any kind in a specially equipped motor vehicle that offers a high degree of security.

(7) "Board" means the board of private security provided for in 2-15-1781.

(8) "Branch office" means any office of a licensee within the state, other than its principal place of business within the state.

(9) "Contract security company" means any person who undertakes to provide a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a contractual basis to another person who exercises no direction and control over the performance of the details of the services rendered.

(10) "Department" means the department of labor and industry provided for in 2-15-1701.

(11) (a) "Electronic security company" means a person who installs, services, or maintains a security alarm system and who undertakes to hire, employ, and provide alarm response runners and security alarm installers on a contractual basis to another person who does not exercise direction and control over the performance of the services rendered.

(b) The term does not include a person whose primary business is that of a locksmith and who may also install closed-circuit television cameras and battery-operated door devices.

~~(12) (a) "Fire investigator" means a person other than an individual identified in subsection (12)(b) who for any consideration:~~

~~—— (i) makes or agrees to make an investigation with reference to:~~

~~—— (A) a fire to identify evidence and determine the cause of the fire; or~~

~~—— (B) accidents involving suspected negligence or arson for criminal or civil action;~~

~~—— (ii) testifies as an expert witness for investigations identified under this subsection (12); or~~

~~—— (iii) cooperates with law enforcement agencies in conducting fire investigations and collecting evidence relating to fires:~~

~~—— (b) The term does not mean an insurance adjuster, an individual designated as the state fire marshal under 2-15-2005, or a member of:~~

~~—— (i) a fire department as described in 7-3-1345;~~

~~—— (ii) law enforcement; or~~

~~—— (iii) an entity organized under Title 7, chapter 33.~~

~~(13)~~(12) "Firearms course" means the course approved by the board and conducted by a firearms instructor.

~~(14)~~(13) "Firearms instructor" means an individual who has been approved by the board to instruct firearms courses in the use of weapons.

~~(15)~~(14) "Insurance adjuster" means a person employed by an insurance company, other than a private investigator, who for any consideration conducts investigations in the course of adjusting or otherwise participating in the disposal of any claims in connection with a policy of insurance but who does not perform surveillance activities or investigate crimes against the United States or any state or territory of the United States.

~~(16)~~(15) "Licensee" means a person licensed under this chapter.

~~(17)~~(16) "Paralegal" or "legal assistant" means a person qualified through education, training, or work experience to perform substantive legal work that requires knowledge of legal concepts and that is customarily but not exclusively performed by a lawyer and who may be retained or employed by one or more lawyers, law offices, governmental agencies, or other entities or who may be authorized by administrative, statutory, or court authority to perform this work.

~~(18)~~(17) "Person" means an individual, firm, company, association, organization, partnership, or corporation.

~~(19)~~(18) "Private investigator" means a person other than an insurance adjuster who for any consideration makes or agrees to make any investigation with reference to:

- (a) crimes against the United States or any state or territory of the United States;
- (b) the identity, habits, conduct, business, occupation, honesty, integrity, trustworthiness, efficiency, loyalty, activity, movement, location, affiliations, associations, transactions, reputation, or character of any person;
- (c) the location, disposition, or recovery of lost or stolen property;
- (d) the cause or responsibility for fires, libels, losses, accidents, or injury to persons or property; or
- (e) gathering evidence to be used before any court, board, officer, or investigating committee.

~~(20)~~(19) "Private security guard" means an individual employed or assigned duties to protect a person or property or both a person and property from criminal acts and whose duties or any portion of whose duties include but are not limited to the prevention of unlawful entry, theft, criminal mischief, arson, or trespass on private property or the direction of the movements of the public in public areas.

~~(21)~~(20) "Process server" means a person described in 25-1-1101(1).

~~(22)~~(21) "Proprietary security organization" means any person who employs a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a routine basis solely for the purposes of that person and exerts direction and control over the performance of the details of the service rendered.

~~(23)~~(22) "Resident manager" means the person appointed to exercise direct supervision, control, charge, management, or operation of each branch office located in this state where the business of the licensee is

conducted.

~~(24)~~(23) (a) "Security alarm installer" means an individual who installs, services, or maintains security alarm systems to detect and signal unauthorized intrusion, movement, break-in, or criminal acts and is employed by an electronic security company.

(b) The term does not include a person whose primary business is that of a locksmith and who may also install closed-circuit television cameras and battery-operated door devices.

~~(25)~~(24) (a) "Security alarm system" means an assembly of equipment and devices or a single device or a portion of a system intended to detect or signal or to both detect and signal unauthorized intrusion, movement, or criminal acts at a location.

(b) The term does not include systems that monitor temperature, humidity, or any other atmospheric condition not directly related to the detection of an unauthorized intrusion or criminal act at a location.

~~(26)~~(25) "Security company" means an electronic security company, a proprietary security organization, or a contract security company.

~~(27)~~(26) "Street patrol service" means a person providing patrols by means of foot, vehicle, or other method of transportation using public streets, thoroughfares, or property in the performance of the person's duties and responsibilities.

~~(28)~~(27) "Unarmed private investigator" means a private investigator who does not wear, carry, or possess a firearm in the performance of the individual's duties.

~~(29)~~(28) "Unarmed private security guard" means an individual who is employed by a contract security company or a proprietary security organization, whose duty or any portion of whose duty is that of a private security guard, armored car service guard, or alarm response runner, and who does not wear, carry, or possess a firearm in the performance of those duties."

Section 2. Section 37-60-103, MCA, is amended to read:

"37-60-103. Purpose. The purpose of this chapter is to increase the levels of integrity, competency, and performance of security companies and their employees who are required to be licensed, firearms instructors, ~~fire investigators~~, private investigators, and process servers to safeguard the public health, safety, and welfare against illegal, improper, or incompetent actions committed by security companies and their licensed employees, firearms instructors, ~~fire investigators~~, private investigators, or process servers."

Section 3. Section 37-60-105, MCA, is amended to read:

"37-60-105. Exemptions. (1) Except as provided in subsection (2), this chapter does not apply to:

(a) any one person employed singly and exclusively by any one employer in connection with the affairs of that employer only and when there exists an employer-employee relationship and the employee is unarmed, does not wear a uniform, and is guarding inside a structure that at the time is not open to the public;

(b) a person:

(i) employed singly and exclusively by a retail merchant;

(ii) performing at least some work for the retail merchant as a private security guard; and

(iii) who has received training as a private security guard from the employer or at the employer's direction;

(c) an officer or employee of the United States, of this state, or of a political subdivision of the United States or this state while the officer or employee is engaged in the performance of official duties;

(d) a person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons or as to the personal habits and financial responsibility of applicants for insurance, indemnity bonds, or commercial credit;

(e) an attorney at law while performing duties as an attorney at law;

(f) a legal intern, paralegal, or legal assistant employed by one or more lawyers, law offices, governmental agencies, or other entities; ~~or~~

(g) a law student who is serving a legal internship;

(h) a collection agency or finance company licensed to do business under the laws of this state, or an employee of a collection agency or finance company licensed in this state while acting within the scope of employment, while making an investigation incidental to the business of the agency or company, including an investigation of the location of a debtor or the debtor's property when the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent;

(i) special agents employed by railroad companies, provided that the railroad company notifies the board that its agents are operating in the state;

(j) insurers and insurance producers and insurance brokers licensed by the state while performing duties in connection with insurance transacted by them;

(k) individuals engaged in the collection and examination of physical material for forensic purposes;

~~(l)~~ an insurance adjuster, as defined in 37-60-101; or

~~(m)~~ an internal investigator or auditor while making an investigation incidental to the business of the agency or company by which the investigator or auditor is singularly and regularly employed.

(2) (a) Except as provided in subsection (2)(b), persons listed as exempt in subsection (1) are not

exempt for the purposes of acting as registered process servers.

(b) Subsection (2)(a) does not apply to attorneys or persons who make 10 or fewer services of process in a calendar year, as provided in 25-1-1101."

Section 4. Section 37-60-301, MCA, is amended to read:

"37-60-301. License required -- process server registration required. (1) (a) Except as provided in 37-60-105, it is unlawful for any person to act as or perform the duties, as defined in 37-60-101, of a contract security company, a proprietary security organization, an electronic security company, a branch office, a private investigator, ~~a fire investigator~~, a security alarm installer, an alarm response runner, a resident manager, a certified firearms instructor, or a private security guard without having first obtained a license from the board.

(b) Except as provided in 25-1-1101(2), it is unlawful for any person to act as or perform the duties of a process server for more than 10 services of process in a calendar year without being issued a certificate of registration by the board.

(2) It is unlawful for any unlicensed person to act as, pretend to be, or represent to the public that the person is licensed as a contract security company, a proprietary security organization, an electronic security company, a branch office, a private investigator, ~~a fire investigator~~, a security alarm installer, an alarm response runner, a resident manager, a certified firearms instructor, or a private security guard.

(3) A person appointed by the court as a confidential intermediary under 42-6-104 is not required to be licensed under this chapter. A person who is licensed under this chapter is not authorized to act as a confidential intermediary, as defined in 42-1-103, without meeting the requirements of 42-6-104.

(4) A person who knowingly engages an unlicensed contract security company, proprietary security organization, electronic security company, branch office, private investigator, ~~fire investigator~~, security alarm installer, alarm response runner, resident manager, certified firearms instructor, or private security guard is guilty of a misdemeanor punishable under 37-60-411."

Section 5. Section 37-60-304, MCA, is amended to read:

"37-60-304. Licenses and registration -- application form and content. (1) An application for a license or for a certificate of registration as a process server must be submitted to the department and accompanied by the application fee set by the board.

(2) An application must be made under oath and must include:

(a) the full name and address of the applicant;

- (b) the name under which the applicant intends to do business;
 - (c) a statement as to the general nature of the business in which the applicant intends to engage;
 - (d) a statement as to whether the applicant desires to be licensed as a contract security company, a proprietary security organization, an electronic security company, a branch office, a certified firearms instructor, a private investigator, ~~a fire investigator~~, a security alarm installer, an alarm response runner, a resident manager, or a private security guard or registered as a process server;
 - (e) except for an applicant pursuant to 37-60-303(7)(a), one recent photograph of the applicant, of a type prescribed by the department, and one classifiable set of the applicant's fingerprints;
 - (f) a statement of the applicant's age and experience qualifications, except for an applicant pursuant to 37-60-303(7)(a); and
 - (g) other information, evidence, statements, or documents as may be prescribed by the rules of the board.
- (3) The board shall verify the statements in the application.
- (4) The submittal of fingerprints is a prerequisite to the issuance of a license or certificate of registration to an applicant, other than an applicant under 37-60-303(7)(a), by means of fingerprint checks by the Montana department of justice and the federal bureau of investigation."

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