



To: Economic Affairs Interim Committee

From: Montana Board of Private Security

Date: June 10, 2013

Subject: HB525 – PSP response to the Economic Affairs Interim Committee questions

1. What is the public health, safety or welfare rationale for licensing and regulating your profession/occupation?

As per Mont. Code Ann. § 37-60-103, the purpose of the Board of Private Security (the board) is to *“increase the levels of integrity, competency, and performance of security companies and their employees who are required to be licensed, firearms instructors, 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, private investigators, or process servers.”*

2. If your profession/occupation were not licensed, what public protection would be lost?

The various private security professions exist to protect the public. Likewise, the board's responsibility is to help ensure that these professionals entrusted by citizens of the State of Montana are competent and qualified to safely perform their duties. As many private security officers and private investigators are armed, it is necessary that appropriate training be required and monitored to ensure public safety. Likewise, private security officers, private investigators, process servers, alarm response runners, and electronic security companies and their employees are often entrusted with information of a confidential nature. The board requires that licensees meet several licensing requirements including a criminal records check as well as training requirements.

3. If a license is necessary (for health, safety, or welfare), does the profession/occupation need a board for oversight? If yes, please explain why and describe the purpose of creating a board.

The board is an appropriate means by which the private security, private investigators, alarm response runners, electronic security companies, contract security companies, and the process server professions can be monitored. Mont. Code Ann. § 2-15-1781 establishes that the board be comprised of members employed in several security-related professions, including contract or proprietary security companies, electronic security companies, city police departments, county sheriff's offices, the public, the Montana public safety officer standards and training council, and private investigators or process servers. This representation of various components of the profession, law enforcement, and the public incorporates diverse knowledge and experience regarding private security that is necessary in providing a balanced level of oversight.

4. Does your board deal with unlicensed practice issues? If yes, what types of issues?

Yes. The board deals with unlicensed practice complaints on a regular basis. Complaints range from individuals acting as private investigators and monitoring the activities of members of the public, to companies hiring unlicensed individuals who interact with and have authority over citizens, and electronic security systems companies who send individuals out to make direct contact with citizens by entering private homes and businesses and installing alarm devices. In all of these cases, these unlicensed individuals have likely interacted with the public without having met training requirements nor have they been properly vetted via a criminal records background check.

5. People who are not licensed but are qualified in an occupation or profession may feel that a licensing board is preventing them from earning a living -- what is your response?

Individuals who desire to earn a living in the various private security-related professions are eligible to apply for licensure from the board. If they meet the qualifications as spelled out in State statute and rules, then they can become licensed and earn their living. The board does not desire to impede licensure of qualified individuals. Rather, protecting public health, welfare and safety requires training and competency standards.

6. How does your board monitor bias among board members toward a particular licensee, an applicant, or a respondent (to unlicensed practice)? How does your board monitor bias toward a particular profession/occupation, if more than one profession or occupation is licensed by the board?

All board members appointed to the board by the governor are responsible for upholding the purpose of the board in increasing the integrity, competency, and performance of the security-related professions and ensuring that public health, welfare, and safety are protected. The very structure of the board, with representation by the public and various law enforcement and private security professionals, helps create balance by the board in its regulation and oversight.

The board's review and consideration of a complaint is bifurcated into two panels, screening and adjudication, so that the board members determining whether reasonable cause exists to proceed with disciplinary action against a licensee are different than those determining the final outcome of the disciplinary matter. The board may request an investigation to be conducted by the Department of Labor and Industry (Department), and in the event a disciplinary action results in a contested case, an administrative hearing examiner is appointed to preside over the case.

board members are educated to identify and understand conflicts of interest, whether perceived or actual, that may prohibit their participation in reviewing or considering issues involving disciplinary matters with licensees, license applications, or complaints of unlicensed practice.

7. Does the profession or occupation have one or more associations that could provide oversight without the need for a licensing board? Why not use the association as the oversight body?

The board is aware of at least one association that exists in the State regarding private investigators and security operators. However, one or more associations do not presently exist in the State that can provide the level of oversight to all of the professions of private security and

license types that the board currently regulates, to the extent necessary to ensure competency and training requirements are met.

8. Is a licensing board needed in order for the practitioner to bill to receive insurance (for example, health insurance)? If so, is there an alternate method for billing that may be recognized rather than having a license or being regulated by a licensing board?

Certain categories of licensees are required to carry insurance or be bonded (i.e., private investigators, firearms instructors, process servers, security companies, etc.) However, it is unknown as to whether the insurance carrier(s) require that these licensees be licensed by the board.

9. What are the benefits of a board being part of the licensing and discipline process instead of the department handling one or both?

While the Department assists the board administratively in the license application and discipline processes, the board is in the best position to determine whether an applicant is qualified for licensure or a licensee has violated the generally accepted standards of practice within his or her profession because the board members represent all facets of the private security professions and possess the experience and expertise necessary to make these decisions.

For example, those individuals applying for licensure as certified firearms instructors must submit course outlines for board approval regarding firearm familiarization, safe handling, use of deadly force, shooting judgment, and civil and criminal liability. Board members with extensive firearms training and experience are better suited than Department staff to determine whether the applicant's proposed course curriculum is sufficient.

10. Is there an optimum ratio between licensees, board size, or public representation?

The current makeup of the board seems to be appropriate, given the diverse number of private security related professions. As previously referenced, Mont. Code Ann. § 2-15-1781 establishes seven board members who represent three different areas of private security, in addition to one public member, one local police representative, one county sheriff representative, and one representative from the Montana public safety officer standards and training council.

11. If a board's purpose includes protecting public welfare, would that consumer protection be handled better by the Attorney General's office than by a board? (In other words, is there a value in a disinterested third party? If yes, why? If not, why not?) Who should be responsible for monitoring fraud within the profession or occupation?

If consumer protection was removed from the purview of the board and the responsibility rested solely with the Attorney General's Office to investigate and adjudicate, the effect on the board would be minimal. However, this change would likely have a larger impact on the citizens of Montana. The question of whether or not this would cause overlap of the board and the Attorney General's office is valid in this response. Consumer protection is not the only area the board addresses. Complaints may contain standards of practice and consumer protection issues. Complaints being handled in segments by separate entities, the board and the Attorney General's office, may not be efficient or in the best interest of any of the parties involved.

The board currently evaluates standards of practice and consumer protection issues using the members' experience and knowledge in various capacities of the private security professions. Therefore, value exists for the board to continue addressing consumer protection and fraud-related allegations. Unprofessional conduct is defined under ARM 23.182.2301 to include several consumer protection and fraud-related issues and the board members evaluate the allegations within the context of the private security industry.

12. If boards have overlapping scopes of practice, should there be a third-party to determine whether there is intrusion into the other's practices? If so, who should be the judge? If not, why not? Should each be allowed to operate on the other's turf without repercussions?

The board is unaware of an overlap with other occupational or health care boards regarding the scope of practice that this board regulates and oversees. However, Mont. Code Ann. § 37-60-105 exempts certain individuals or entities from licensing with the board to avoid scope of practice overlap with other industries or regulatory bodies, including federal and state employees, attorneys practicing law, insurance producers, and others.

13. Should any board have the ability to limit use of certain terminology to only a licensee?

Boards should be able to limit the use of certain terminology when necessary to protect public, health, welfare and safety. As an example, an individual representing to the public that he or she is an Armed Private Security Guard without meeting the necessary training requirements to competently handle a firearm and otherwise perform the duties of the profession poses a threat to the citizens of the State of Montana.