

2006
SUN-
R-
F-
R-
E-
W

Colorado Department of Regulatory Agencies
Office of Policy, Research and Regulatory Reform

Private Investigators



October 12, 2006

STATE OF COLORADO

DEPARTMENT OF REGULATORY AGENCIES

Office of the Executive Director
Tambor Williams
Executive Director

1560 Broadway, Suite 1550
Denver, CO 80202
Phone: (303) 894-7855
Fax: (303) 894-7885
V/TDD: (303) 894-7880



Bill Owens
Governor

October 12, 2006

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado Department of Regulatory Agencies has completed its evaluation of the sunrise application for regulation of private investigators and is pleased to submit this written report. The report is submitted pursuant to section 24-34-104.1, Colorado Revised Statutes (C.R.S.), which provides that the Department of Regulatory Agencies shall conduct an analysis and evaluation of proposed regulation to determine whether the public needs, and would benefit from, the regulation.

The report discusses the question of whether there is a need for the regulation in order to protect the public from potential harm, whether regulation would serve to mitigate the potential harm, and whether the public can be adequately protected by other means in a more cost-effective manner.

Sincerely,

A handwritten signature in cursive script that reads "Tambor Williams".

Tambor Williams
Executive Director

Table of Contents

The Sunrise Process	1
<i>Background</i>	<i>1</i>
<i>Methodology</i>	<i>1</i>
Proposal for Regulation	2
<i>Profile of the Profession</i>	<i>2</i>
Summary of Current Regulation	8
<i>The Colorado Regulatory Environment</i>	<i>8</i>
<i>Regulation in Other States</i>	<i>9</i>
Analysis and Recommendations	14
<i>Public Harm</i>	<i>14</i>
<i>Need for Regulation</i>	<i>19</i>
<i>Alternatives to Regulation</i>	<i>20</i>
<i>Conclusion</i>	<i>21</i>
<i>Recommendation – Do not regulate private investigators.</i>	<i>22</i>
Appendix A - Office of Examination Services - Psychometric Review	23
Appendix B – Professional Private Investigators Association of Colorado Model Legislation	29

The Sunrise Process

Background

Colorado law, section 24-34-104.1, Colorado Revised Statutes (C.R.S.), requires that individuals or groups proposing legislation to regulate any occupation or profession first submit information to the Department of Regulatory Agencies (DORA) for the purposes of a sunrise review. The intent of the law is to impose regulation on occupations and professions only when it is necessary to protect the public health, safety or welfare. DORA must prepare a report evaluating the justification for regulation based upon the criteria contained in the sunrise statute:

- (I) Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety, or welfare of the public, and whether the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;
- (II) Whether the public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional or occupational competence; and
- (III) Whether the public can be adequately protected by other means in a more cost-effective manner.

Any professional or occupational group or organization, any individual, or any other interested party may submit an application for the regulation of an unregulated occupation or profession. Applications must be accompanied by supporting signatures and must include a description of the proposed regulation and justification for such regulation. Applications received by December 1 must have a review completed by DORA by October 15 of the year following the year of submission.

Methodology

DORA has completed its evaluation of the proposal for regulation of private investigators. During the sunrise review process, DORA performed a literature search, contacted and interviewed the applicant, reviewed licensure laws in other states and conducted interviews of administrators of those programs. In order to determine the number and types of complaints filed against private investigators in Colorado, DORA contacted representatives of the Denver District Attorney's Office, the Denver/Boulder Better Business Bureau, and the Office of the Attorney General Consumer Protection Section. To better understand the practice of private investigating, the author of this report attended a private investigator training program.

Proposal for Regulation

The Professional Private Investigators Association of Colorado (Applicant) has submitted a sunrise application to the Department of Regulatory Agencies (DORA) for review in accordance with the provisions of section 24-34-104.1, Colorado Revised Statutes (C.R.S.). The application identifies state licensing of private investigators as the appropriate level of regulation to protect the public.

The Applicant has approximately 125 members, which is approximately 26 percent of Colorado's private investigators. The Applicant also submitted model legislation, which is included as Appendix B on page 29.

Profile of the Profession

The U.S. Department of Labor describes, in detail, the occupation of private investigators and private detectives:¹

Private investigators use many methods to determine the facts in a variety of matters. To carry out investigations, they may use various types of surveillance or searches. To verify facts, such as an individual's place of employment or income, they may make phone calls or visit a subject's workplace. In other cases, especially those involving missing persons and background checks, investigators often interview people to gather as much information as possible about an individual. Generally speaking, private investigators assist attorneys, businesses, and the public with legal, financial, and personal problems.

Investigators may provide any number of client services including pre-employment verification and individual background profiles. They investigate computer crimes, such as identity theft, harassing e-mails, and illegal downloading of copyrighted material. They also provide assistance in civil liability and personal injury cases, insurance claims and fraud, child custody and protection cases, missing persons cases, and premarital screenings. They are sometimes hired to investigate individuals to prove or disprove infidelity.

¹ Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook, 2006-07 Edition*, Private Detectives and Investigators, on the Internet at <http://www.bls.gov/oco/ocos157.htm> visited March 1, 2006.

Investigators often are called upon to conduct physical surveillance. They may observe a site, such as the home of a subject, follow a subject by vehicle or on foot to observe behavior. Investigators use still and video cameras, binoculars, and cell phones, to monitor subjects and acquire information. It is common for investigators to conduct surveillance for lengthy periods of time and employ other investigators to assist in on-going surveillance.

Investigators search or access computer databases or work with other investigators to quickly obtain massive amounts of information on individuals' prior arrests, convictions, and civil legal judgments; telephone numbers; motor vehicle registrations; association and club memberships; and other matters.

The duties of investigators depend on the needs of their clients. In cases for employers that involve fraudulent workers' compensation claims, for example, investigators may carry out long-term covert observation of subjects. If an investigator observes a subject performing an activity that contradicts injuries stated in a worker's compensation claim, the investigator would take video or still photographs to document the activity and report it to the client.

Private detectives and investigators often specialize. Those who focus on intellectual property theft, for example, investigate and document acts of piracy, help clients stop illegal activity, and provide intelligence for prosecution and civil action. Other investigators specialize in developing financial profiles and asset searches. Their reports reflect information gathered through interviews, investigation and surveillance, and research, including review of public documents.

Legal investigators specialize in cases involving the courts and are normally employed by law firms or lawyers. They frequently assist in preparing criminal defenses, locating witnesses, serving legal documents, interviewing police and prospective witnesses, and gathering and reviewing evidence. Legal investigators also may collect information on the parties to the litigation, take photographs, testify in court, and assemble evidence and reports for trials.

Corporate investigators conduct internal and external investigations for corporations. In internal investigations, they may investigate drug use in the workplace, ensure that expense accounts are not abused, or determine whether employees are stealing merchandise or information. External investigations are typically done to uncover criminal schemes originating outside the corporation, such as theft of company assets through fraudulent billing of products by suppliers.

Financial investigators may be hired to develop confidential financial profiles of individuals or companies that are prospective parties to large financial transactions. These investigators often are certified public accountants (CPAs) who work closely with investment bankers and other accountants. They search for assets in order to recover damages awarded by a court in fraud or theft cases.

Working Conditions

Private detectives and investigators often work irregular hours because of the need to conduct surveillance and contact people who are not available during normal working hours. Early morning, evening, weekend, and holiday work is common.

Many detectives and investigators spend time away from their offices conducting interviews or doing surveillance, but some work in their office most of the day conducting computer searches and making phone calls. Those who have their own agencies and employ other investigators may work primarily in an office and have normal business hours.

When an investigator is working on a case away from the office, the environment might range from plush boardrooms to seedy bars. Store and hotel detectives work in the businesses that they protect. Investigators generally work alone, but they sometimes work with others during surveillance or when following a subject in order to avoid detection by the subject.

Some of the work involves confrontation, so the job can be stressful and dangerous. Some situations call for the investigator to be armed, such as certain bodyguard assignments for corporate or celebrity clients. Detectives and investigators who carry handguns must be licensed by the appropriate authority. In most cases, however, a weapon is not necessary, because the purpose of the work is gathering information and not law enforcement or criminal apprehension. Owners of investigative agencies have the added stress of having to deal with demanding and sometimes distraught clients.

Training, Other Qualifications, and Advancement

There are no formal education requirements for most private detective and investigator jobs, although many private detectives have college degrees. Private detectives and investigators typically have previous experience in other occupations. Some work initially for insurance or collections companies, in the private security industry, or as paralegals. Many investigators enter the field after serving in law enforcement, the military, government auditing and investigative positions, or federal intelligence jobs.

Former law enforcement officers, military investigators, and government agents, who are frequently able to retire after 25 years of service, often become private detectives or investigators in a second career. Others enter from such diverse fields as finance, accounting, commercial credit, investigative reporting, insurance, and law. These individuals often can apply their prior work experience in a related investigative specialty. A few enter the occupation directly after graduation from college, generally with associate's or bachelor's degrees in criminal justice or police science.

Training in subjects such as criminal justice and police science is helpful to aspiring private detectives and investigators. Most corporate investigators must have a bachelor's degree, preferably in a business-related field. Some corporate investigators have a master's degree in business administration or a law degree, while others are CPAs. Corporate investigators hired by large companies may receive formal training from their employers on business practices, management structure, and various finance-related topics. The screening process for potential employees typically includes a background check for a criminal history.

Some investigators receive certification from a professional organization to demonstrate competency in a field. For example, the National Association of Legal Investigators (NALI) confers the Certified Legal Investigator designation to licensed investigators who devote a majority of their practice to negligence or criminal defense investigations. To receive the designation, applicants must satisfy experience, educational, and continuing-training requirements and must pass written and oral exams administered by the NALI.

Employment

Nationwide, private detectives and investigators held about 43,000 jobs in 2004. About 26 percent were self-employed, including many who held a secondary job as a self-employed private detective. Around 27 percent of jobs were in investigation and security services, including private detective agencies, while another 15 percent were in department or other general merchandise stores. The rest worked mostly in state and local government, legal services firms, employment services companies, insurance agencies, and credit mediation establishments, including banks and other depository institutions.

Employment of private detectives and investigators is expected to grow faster than the average for all occupations through 2014. In addition to growth, replacement of those who retire or leave the occupation for other reasons should create many job openings. Increased demand for private detectives and investigators will result from fear of crime, increased litigation, and the need to protect confidential information and property of all kinds. The proliferation of criminal activity on the Internet, such as identity theft, spamming, e-mail harassment, and illegal downloading of copyrighted materials, will increase the demand for private investigators. Employee background checks, conducted by private investigators, will become standard for an increasing number of jobs. Growing financial activity worldwide will increase the demand for investigators to control internal and external financial losses and to monitor competitors and prevent industrial spying.

Related Occupations

Private detectives and investigators often collect information and protect the property and other assets of companies and individuals. Others with related duties include bill and account collectors; claims adjusters, appraisers, examiners, and investigators; police and detectives; and security guards and gaming surveillance officers. Investigators who specialize in conducting financial profiles and asset searches perform work closely related to that of accountants, auditors, financial analysts, and personal financial advisors.

Private Investigation Occupation in Colorado

In Colorado, the Private Investigators Academy of the Rockies offers private investigator training. The winter 2006 curriculum, as an example, was a six-week session that met two times a week for three hours per class.

Among other topics, students are taught interviewing techniques, insurance defense, public corruption investigations, surveillance techniques, instruction in how to testify in court and the conduct of complex financial investigations. In addition, the course prepares students to write investigation reports and provide service of process. Students are instructed in the appropriate legal framework for the various subjects. As an example, students must research laws relating to stalking and demonstrate knowledge of those laws as a precursor to the discussion of surveillance and the field work of actually conducting surveillance.

According to the Colorado Department of Labor and Employment, there were 490 private investigators in Colorado in 2002 with an estimated increase to 600 private investigators in 2012. The average hourly wage of a private investigator or detective in Colorado is \$16.92 and the median hourly wage is \$14.32. The average annual wage is \$35,200 and the average median wage is \$29,790.²

² <http://www.coworkforce.com>

Summary of Current Regulation

The Colorado Regulatory Environment

There has been no state regulation of private investigators in Colorado since 1977, when the Colorado Supreme Court ruled the licensee law unconstitutional because of problems with the definition of private detective agencies.³

Although no state occupational regulation exists in Colorado, private investigators are subject to a large number of criminal and civil laws. To be sure, these laws are not specific to private investigators but the nature of the occupational activities of private investigators exposes the practitioners to the risk of violating certain laws such as stalking when conducting surveillance.

Regarding state law, the Attorney General of Colorado identifies more than 30 criminal provisions that could apply to private investigators and another five related to identity theft alone. In addition to these provisions, numerous other laws pertain to many of the activities of a private investigator, particularly laws against stalking.

The Colorado General Assembly passed and the Governor signed into law House Bill 06-1326 to further combat identity theft. The act amends several provisions of Colorado statute including enumerating the provisions constituting commission of the crimes of identity theft,⁴ criminal possession of a financial device,⁵ gathering identity information by deception⁶ and possession of identity theft tools.⁷

In addition, a review of the city website reveals that the City of Durango, Colorado licenses private investigators.

There is no direct federal regulation of private investigators. However, because the activities of private investigators often involve access to or attempted access of personal information, investigators are subject to numerous laws.

³ *People v. Ro' Mar*, 559 P.2d 710 (Colo. 1977).

⁴ § 18-5-902, C.R.S.

⁵ § 18-5-903, C.R.S.

⁶ § 18-5-904, C.R.S.

⁷ § 18-5-905, C.R.S.

The Gramm-Leach-Bliley Act (GLBA) makes the act of pretexting illegal and subject to punishment under federal statutes. To pretext is to pretend to be someone else or deceive in order to acquire information.⁸ The Federal Trade Commission (FTC), under the authority of the GLBA, has jurisdiction over such activity. Thus, if a private investigator uses false pretenses to secure personal, non-public information from a financial institution or from the consumer, he or she may be exposed to action by the FTC.⁹

In addition to the GLBA, the Driver's Privacy Protection Act (Act) prohibits state motor vehicle departments from disclosing personal information in motor vehicle records. However, the Act enumerates permissible uses that include law enforcement and insurance-related transactions.

The Health Information Portability and Accountability Act addresses the disclosure of medical information. Although the patient must provide consent for non-routine disclosures, disclosure of patient records and billing statements for insurance and routine treatment is permitted without individual consent.¹⁰

Regulation in Other States

The majority of states and the District of Colombia require private detectives and investigators to be licensed. Licensing requirements vary, however. Seven states - Alabama, Alaska, Colorado, Idaho, Mississippi, Missouri, and South Dakota - have no statewide licensing requirements. A growing number of states are enacting mandatory training programs for private detectives and investigators. For example, the Bureau of Security and Investigative Services of the California Department of Consumer Affairs requires private investigators to be 18 years of age or older; have a combination of education in police science, criminal law, or justice and experience equaling three years (6,000 hours) of investigative experience; pass a criminal history background check by the California Department of Justice and the Federal Bureau of Investigation (FBI) (in most states, convicted felons cannot be issued a license); and receive a qualifying score on a two-hour written examination covering laws and regulations. There are additional requirements for a firearms permit.¹¹

⁸ Pub. L. No. 106-102, §521, 113 Stat. 1338 (1999)

⁹ Pub. L. No. 106-102, §522, 113 Stat. 1338 (1999)

¹⁰ 45 C.F.R. Part 164.

¹¹ Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook, 2006-07 Edition*, Private Detectives and Investigators, on the Internet at <http://www.bls.gov/oco/ocos157.htm> visited March 1, 2006.

The majority of states regulate private investigators and all of the seven states bordering Colorado regulate the occupation. Tables 1 and 2 represent a compilation of data gathered in the course of conducting research for this sunrise review. In addition to material gathered from secondary sources, a survey was conducted of the 41 states that license private investigators through state regulation. One state, Wyoming, regulates private investigators through municipal regulation but no attempt was made to survey those governmental entities.

Table 1
Metrics of Regulation of Private Investigators in Other States

State	Number of Investigators (Last Calendar or Fiscal Year)	Number of Applications and Denials (Last Calendar or Fiscal Year)	Complaints (Last Calendar or Fiscal Year)	Disciplinary Actions (Last Calendar or Fiscal Year)
Arizona Department of Public Safety	Approximately 2,500 total licenses. (Investigators / Agencies / Employees)	Not Available	Not Available	Not Available
California Department of Consumer Affairs, Bureau of Security and Investigative Services Licensing	9,971 total licenses.	520 applications received 435 licenses issued after exam and background check. 0 denials	35 complaints	15 enforcement actions taken.
Florida Department of State, Division of Licensing	7,365 private investigators 2,104 private investigator interns	1,007 applications 24 denied, 17 withdrawn, 1 pending (Reasons for denials unknown.)	173 compliant investigations and 1,325 compliance investigations.	Issued 393 administrative complaints against investigators and agencies.
Hawaii Department of Commerce and Consumer Affairs	120 private investigators	21 applications 0 denials	5 complaints (may include complaints against security guards).	1 disciplinary action (Hiring an employee that was convicted of a crime).
Illinois Department of Professional Regulation	Not Available	Not Available	Not Available	7 instances of discipline in 2005 (standard of practice and unlicensed activity.)
Kansas Bureau of Investigation	160 independent private investigators. 178 private investigators with firearms permits. 124 agency licenses. 364 agency employees.	209 issued	11 complaints (one attempted aggravated assault, aggravated robbery, kidnapping, criminal possession of a firearm) (Top complaints are stalking - people not understanding surveillance, not getting their reports – some don't feel they need to pay so they are not given the reports, practicing without a license.)	0 suspended 1 warning 1 revoked 9 no action taken/no laws broken.

State	Number of Investigators (Last Calendar or Fiscal Year)	Number of Applications and Denials (Last Calendar or Fiscal Year)	Complaints (Last Calendar or Fiscal Year)	Disciplinary Actions (Last Calendar or Fiscal Year)
Maine Department of Public Safety	883 private investigators.	60 applications 6 denials - 2 applications pending (false application or failure to comply with a shortage request).	Complaints typically against company.	Discipline is usually assessed fines.
Nebraska Secretary of State	90 private detective agencies. 91 private detectives. 180 plainclothes investigators.	Approximately 60 applications received. 10-15 licenses issued. 3 denials (improper character and reputation).	0 complaints.	0 actions.
New Jersey Department of Law and Public Safety=, Division of State Police	Approximately 1,500 private investigators (private investigator and security currently under one license).	5 or 6 denials.	Most complaints are unfounded.	1 or 2 revocations or denials of licensure per year.
New York Department of State	2,659 private investigators.	473 applications received. 383 denials.	73 complaints	23 referred for hearings; 2 referred for tickets.
Oregon Board of Investigators	700 active private investigators.	Approximately 75 applications per year. 10-15 denials (criminal history standards, moral fitness standards and testing standards all play a role).	Approximately 100 open complaints.	Not Available
Texas Board of Private Investigators and Private Security Agencies	5,339 private investigators.	Not Available	502 complaints.	487 actions.
Vermont Secretary of State, Board of Private Investigative & Security Services	106 unarmed private investigators 10 armed private investigators	Not Available	Not Available	Not Available
Washington Department of Licensing, Private Investigator Licensing Program	720 private investigators.	7 denials (criminal convictions).	Average 36 complaints per year.	Average 6 disciplinary actions per year.

Table 2
Bonding and Background/Criminal History Requirements of Other States

State	Bond/Insurance Requirements	Criminal History or Background Check Required
Alabama	No State Licensing	
Alaska	No State Licensing	
Arizona	\$2,500 surety bond*	X
Arkansas		X
California	If armed, \$500,000 bodily injury and \$500,000 property insurance.*	X*
Colorado	No State Licensing	
Connecticut	\$10,000 performance surety bond with the state as a condition of license, and also provide a \$ 300,000 general liability insurance policy.	X
Delaware	Bonds and liabilities required.	X
Florida		X*
Georgia		X
Hawaii	Not less than \$5,000*	X
Idaho	No State Licensing	
Illinois	\$25,000 bond \$25,000 insurance*	X*
Indiana	Surety bond in the amount of \$7,000.00 for 14 or fewer employees or proof of \$100,000 per occurrence liability insurance. For 15 or more employees, proof of \$100,000 per occurrence liability insurance.	X
Iowa	\$5,000 surety bond	X
Kansas	\$100,000 general liability or surety bond*	X*
Kentucky	Insurance coverage in the amount of at least \$250,000.	X
Louisiana		X
Maine	Insurance (Amount depends on type of company)*	X*
Maryland		X
Massachusetts		X
Michigan		X
Minnesota		X
Mississippi	No State Licensing	
Missouri	No State Licensing	
Montana		
Nebraska	\$10,000 bond*	X*
Nevada		X
New Hampshire	\$50,000 surety bond	
New Jersey	Surety bond - \$5,000 LLC or corporate \$3,000 individual*	X*
New Mexico		
New York	\$10,000 bond*	X*
North Carolina		
North Dakota		
Ohio		
Oklahoma		
Oregon	\$5000 bond, EEO insurance or an irrevocable letter of credit*	X*
Pennsylvania		
Rhode Island		
South Carolina		
South Dakota	No State Licensing	
Tennessee		
Texas	\$100,000 per occurrence – bodily injury insurance \$50,000 per occurrence – personal injury insurance \$200,000 total for all occurrences*	X*
Utah		

State	Bond/Insurance Requirements	Criminal History or Background Check Required
Vermont		X*
Virginia		X*
Washington	\$10,000 surety bond	X*
West Virginia		
Wisconsin	Comprehensive general liability policy maintained by the private detective agency or be bonded for \$2,000.	X
Wyoming	No State Licensing	

* - Results of Office of Policy, Research and Regulatory Reform's State Survey
http://www.acinet.org/acinet/licensedoccupations/lois_desc.asp

Table 2 points out that Colorado is one of the eight states that do not require private investigators to secure a state license. Alabama, Alaska, Idaho, Mississippi, Missouri, South Dakota and Wyoming have no state regulation. Wyoming and the municipality of Anchorage, Alaska are typically represented in the literature as requiring some type of municipal regulation. Municipal regulation is always a potential regulatory option absent state regulation as evidenced by the regulation of private investigators by the City of Durango, Colorado.

In addition, Table 2 shows that 29 states require some type of criminal history or background check in order to qualify as a private investigator. Other states may deny an applicant based on the applicant's criminal history, but Table 2 does not identify whether the state conducts routine background checks to either secure or verify the applicant's background and history.

Tables 1 and 2 represent the responses of 14 states that responded to the sunrise survey as well as other research. The goal of the survey questions represented by the responses is to document a variety of program metrics of the states that regulate private investigators.

Policymakers may find especially useful the program measurements related to application denials and enforcement actions in Table 1. One measure of regulatory effectiveness is the prevention of practice by those deemed unfit or unqualified and the removal from practice of those who have been licensed, or permitted to practice, who violate the law or harm the public.

Not all of the states represented in Table 1 provided enforcement data and some of the information that is provided is sketchy at best. However, the survey results provide some glimpses of the national regulatory landscape.

There appears to be a somewhat low level of enforcement activity by regulators in the responding states as evidenced by Table 1. Policymakers' attention should be drawn to the rather significant numbers of denials in Florida, New York and Oregon. Other measurements such as the 502 complaints and 487 actions in Texas indicate significant problems in the investigatory occupation.

Analysis and Recommendations

Public Harm

The first sunrise criterion asks:

Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety or welfare of the public, and whether the potential for harm is easily recognizable and not remote or dependent on tenuous argument.

The Professional Private Investigators Association of Colorado (Applicant) asserts that there are three broad areas of harm or potential harm to Colorado consumers absent state regulation.

Failure to fulfill obligation to the consumer

Unless a consumer possesses something of the knowledge and abilities of a private investigator, it is extremely unlikely that the consumer will have a reasonable basis for challenging the work product he or she receives from a private investigator. Licensing, at a minimum, asserts a force upon private investigators to perform the work required; and, at a maximum, provides real penalties for willful non-performance.

Deception in the presentation of experience, qualifications and credentials

There exists the notion that the consumer can make an educated decision based on reputation in selecting a private investigator to handle an issue. The opposite is the case. Most consumers know little or nothing about the industry and would have to guess as to whether one private investigator or another is the best or most qualified choice. Licensing can provide the assurance of at least minimum standards of education, experience, and expertise, understanding of Colorado law, and not inconsiderably, a reasonable expectation that the private investigator is not a convicted felon.

Direct, personal risks to consumers

A consumer must have a reasonable expectation that the private investigator he or she employs will not engage in trespass, theft, fraud, stalking, criminal deception, or other criminal or unethical conduct in the pursuit of an assignment. Such illegal, unethical conduct can, and often will, leave the client open to serious repercussions that certainly may include lawsuits for money damages or even criminal charges.

In further support of the proposal to regulate, the Applicant provided nine examples of specific harm to consumers. The Applicant's summary of each case and the sunset analysis of each case follow.

1. A woman arrested on charges of failure to appear in a theft case and possession of a controlled substance identified herself as a Colorado private investigator. The arrest record identified for her by the Colorado Bureau of Investigation identifies more than a dozen alias names and a long history of arrests for dangerous drugs, theft, possession and sale of dangerous drugs, forgery, selling amphetamine, larceny, violation of bail or bond, violating parole, and 17 instances of failure to appear/fugitive. (2005 – Federal Heights)

Analysis

This example provides no showing of harm to a Colorado consumer by a private investigator. However, this individual could function as a private investigator in Colorado's unregulated market.

2. A complaint was filed against a Colorado private investigator by a California private investigator, accusing the Colorado private investigator of non-payment for services rendered. The complaint is on file with the Colorado Attorney General's Office. The private investigator who is the subject of the complaint has not been found. (2005 – Denver County)

Analysis

There is no finding of fact in this case as presented in the application. Even if the facts presented are substantiated through the Attorney General's Office's investigation, two factors of the case argue against state licensing as the appropriate response to such business problems. First, it is reasonable to assume that the complainant wants the private investigator to render payment. Licensing boards in Colorado typically do not have such authority although a regulatory scheme establishing a recovery fund (funded by licensee fees) could be enacted by the General Assembly. Secondly, some mechanism exists (the complaint is "on file with the Attorney General's Office,"

according to the submission) to receive complaints presently. Undoubtedly, such disputes are fairly common in business transactions across many occupations and professions. Absent a convincing showing that such occurrences are quite prevalent and that market forces and existing government efforts are inadequate, this example does not persuade.

3. An Omaha, Nebraska family paid a Colorado private investigator \$2,000 to conduct a background investigation of their daughter's boyfriend in Colorado. The investigator sent several reports but never completed the assignment. He failed to respond to numerous e-mails and letters. The same investigator later was reported to have obtained confidential personal financial information on Governor Mitt Romney of Massachusetts. (2004 – Frederick, Colorado)

Analysis

It is not possible to evaluate this case properly because it is not clear what the investigator failed to do in terms of completing the assignment. For example, this case presentation may be made by a new investigator taking over the case who objects to the original investigator's performance. However, it may be reasonable to assume that the investigator performed poorly and conducted poor business practices relating to communication with the client.

Even with that assumption, however, the case does not support state licensing. In order to draw that conclusion, we look at the model law included with the application and reproduced in Appendix B on page 29 of this report. The model law contains no scope of practice for private investigators and that is what is needed in order determine what action(s) the investigator failed to perform or performed so poorly as to be grounds for disciplinary action by the state agency. Indeed, given the nature of the private investigator's work, such a scope of practice may be impossible to effectively represent in statute. The anecdotal reference to activities concerning the Governor of Massachusetts are not substantiated.

4. Two Colorado private investigator operators of a company known as Touch Tone Information in Denver were accused by the Federal Trade Commission of identity theft. The operators settled the charges with a judgment of \$200,000. (1999 – Denver County)

These Colorado private investigators were also charged under Colorado's racketeering statute with illegally obtaining information about John and Patsy Ramsey in the JonBenet Ramsey case for a supermarket tabloid and others. One of the principals was sentenced to jail and probation. A second received a deferred sentence. Both were barred from working again as private investigators in Colorado.

Analysis

This case illustrates the sensitive types of information with which private investigator's deal. It is not clear, though, how or why the defendant's were barred from working as private investigators because private investigators cannot legally acquire any information that is not available to any other person. The acts perpetrated in the case obviously exceeded the normal functions of investigators and violated the law, as evidenced by the convictions. Perhaps one might argue that a state licensing requirement would prevent both individuals from practicing in Colorado again because of the felony records they now have, but they are prevented from doing so under court order even within Colorado's open market.

5. Two Colorado private investigators were cited for burglary and criminal trespass. After a meeting at a home of one of the Colorado private investigators, the second Colorado private investigator and an associate broke into the home of two sheriff's deputies looking for evidence in a child abuse case. The Colorado private investigators were convicted and given deferred sentences. (1998 – Park County)

Analysis

These private investigators were convicted for breaking the law. In Colorado's unregulated market, they could continue to work as private investigators.

6. A Colorado private investigator had a judgment rendered against her for what the judge described as "circumstances of fraud and disregard for personal rights." Judgment: over \$37,000. (1998 – Denver County)

Analysis

This case does not establish that the judgment resulted from activities performed as a private investigator. In Colorado's unregulated market, this private investigator could continue to work as a private investigator.

7. A Colorado private investigator, who previously was a sheriff's deputy, was hired by a supermarket tabloid to obtain autopsy photos in the JonBenet Ramsey case. He then hired an accomplice to obtain the photos. The private investigator was charged with obstructing governmental operations. (1998 – Boulder County)

Analysis

This case does not establish that any law was broken. The charge appears to be pending. However, in Colorado's unregulated market, this private investigator could continue to work as a private investigator.

8. A warrant was issued for the arrest of a Colorado private investigator, who took \$1,000 from an 80-year-old woman and then failed to perform the work requested. Over a period of years, one of this Colorado private investigator's employees was arrested and charged with stalking Jennifer Flowers, a former girlfriend of President Clinton and the private investigator was ordered, after a civil trial, to pay \$150,000 to a man as a result of the investigator's alleged break-in at the man's business. (Denver County)

Analysis

This case presents three examples of harm to the public: failure to perform, stalking and breaking and entering.

Existing criminal and civil procedures exist to address such transgressions. Again, Colorado law provides no regulatory mechanism to prevent these individuals from continuing to practice as private investigators.

9. A former Colorado bail bondsman (licensed in the early 1980s) pleaded guilty to more than 80 counts of forgery in the early 1990s. He already had a record as a felon in Texas. Later, a Denver-area Yellow Pages ad appeared identifying this individual as a "private investigator." (1993 – Denver County)

Analysis

This case demonstrates that an individual with a criminal conviction can practice as a private investigator in Colorado.

Of the cases submitted by the Applicant, some show a degree of harm to the public or establish a reasonable potential for harm. Under Colorado's unregulated market structure (in terms of occupational licensing of private investigators) these individuals could continue to present themselves to the public as private investigators.

In addition, the Colorado Attorney General's Office (AGO) reports that it has received 41 complaints against private investigators since 2003. However, the AGO reports that those complaints were forwarded to the Better Business Bureau for resolution.

Contact with district attorneys on the Front Range and Western Slope, however, revealed no complaints against private investigators.

Need for Regulation

The second sunrise criterion asks:

Whether the public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional or occupational competence.

In the instant case, this criterion focuses on the educational, examination and experiential components of the proposal to license private investigators. The sunrise application does not recommend that the state impose educational requirements as part of the proposed regulation. However, the proposal contains experiential and examination components.

The Applicant forwards a proposal that all private investigators practicing in Colorado at the time of implementation of regulation be “grandfathered,” a term that refers to allowing existing practitioners to avoid the state’s examination requirements. The Applicant proposes a two-tiered approach that divides private investigators into two groups: those with more than 6,000 hours of experience and those with less than 6,000 hours of experience. Private investigators would receive a Licensed Private Investigator license or a Licensed Associate Private Investigator license, respectively.

This aspect of the proposal fails to answer the second criterion in the positive. To allow all of the private investigators currently practicing in Colorado to continue to practice, and grandfathering would do that, is to allow the so-called “bad apples” into the regulatory system. While the broad idea behind grandfathering is positive in the sense that grandfathering is an effort to reduce the burden of new regulation, in this case it would work against the Applicant’s intention.

Further, the evidence does not support the imposition of experience requirements as a condition to practice as a private investigator in Colorado. While there may indeed be some investigators in Colorado who may be less than competent in the eyes of their peers and competitors, there is insufficient proof of harm through incompetence to warrant state action.

The final analysis regarding assurance of competence concerns the examination of private investigators before licensing. The Applicant’s examination proposal was submitted to the Colorado Department of Regulatory Agencies, Division of Registrations for psychometric review by the Office of Examination Services (OES).

In its review, OES found:

The sunrise application submitted by the Applicant reveals some seemingly logical but psychometrically inconsistent premises that commonly underlie assumptions about requirements for instituting a competency examination as a condition of entry to practice within a regulated profession.

OES, in summary, reported:

The valid interpretation of performance on licensing tests depends on the extent to which:

1. the knowledge and skills identified for credential-worthy performance in an occupation are consistent with the purposes for instituting a licensing program;
2. the content purported to be assessed by each form of the licensing test represents adequately dimensions of the occupation that are believed to underlie safe and appropriate practice;
3. the standard for passing each form of the licensing examination represents consistently valid distinctions between candidates that possess and candidates that do not possess the essential knowledge and skills thought to underlie credential-worthy performance within the occupation; and
4. evidence demonstrates informed standard setting and equating/linking of different forms of the licensing test.

The full OES report is included in this sunrise review as Appendix A on page 23.

Alternatives to Regulation

The third sunrise criterion asks:

Whether the public can be adequately protected by other means in a more cost-effective manner.

Licensing is the most rigorous regulatory response by the state in terms of occupational regulation. The combination of examination, educational or experiential standards, oversight, investigation, discipline and potential litigation costs drive increases in government expenditures. The start-up costs for a licensing board are typically around \$50,000 and, in the instant case, OES estimates the cost of creating an examination for private investigators to be approximately \$10,915.

More cost-effective approaches to state licensing include the option of the General Assembly taking no action. While this option does not address public protection directly, it does allow municipalities throughout Colorado to license private investigators at the cities' option.

Another more cost-effective option is the registration of private investigators. This option ensures that a uniform set of standards be applied to all who hold themselves out to the public as private investigators (such as the requirement to pass a fingerprint-based criminal history background check). This uniform approach is a significant difference between state regulation and municipal regulation model.

Conclusion

This review finds insufficient evidence of harm to the public from the unregulated practice of the occupation of private investigators to warrant state licensing of the occupation. Licensing of an occupation by the state includes numerous requirements such as educational standards and examination components. State licensing can significantly restrict competition by reducing the number of competitors and increasing business compliance costs, thus increasing costs to consumers. In addition, state licensing increases the cost of government.

The Applicant provided evidence of potential problems faced by Colorado citizens when contracting with or contacting private investigators. However, reasonable diligence by consumers could provide adequate assurance of credibility of the private investigator.

As an example, the Applicant, a Colorado entity, maintains a registry of its members that consumers can access when choosing an investigator. Choosing an investigator in this manner affords a reasonable degree of certainty of the investigator's credentials and that the business will be legitimate.

Sophisticated consumers such as attorneys can be expected as a matter of practice to check the backgrounds of investigators before contracting for services. In addition, word of mouth references are typical in this professional environment.

We also note the relative lack of harm as evidenced by our contact with district attorneys on the Front Range and the Western Slope. Our sample reported no complaints against private investigators.

The AGO's Consumer Protection Section reported a total of 41 complaints since 2003. However, all of those complaints were referred to the Denver Better Business Bureau for resolution. A total of six companies were complained against and the Better Business Bureau reports that one company may be improperly filed as a private investigator business.

In conclusion, the analysis of the actual harm in Colorado as a result of the unregulated practice of private investigators in the state does not meet the threshold necessary to warrant state regulation.

Recommendation – Do not regulate private investigators.

Appendix A - Office of Examination Services - Psychometric Review

STATE OF COLORADO

OFFICE OF EXAMINATION SERVICES

Rose C. McCallin, Director

1560 Broadway, Suite 1340
Denver, Colorado 80202
Phone (303) 894-7710
Fax (303) 894-7710
TTY: Dial 711 for Relay Colorado

Department of Regulatory Agencies

Tambor Williams
Executive Director

Division of Registrations

Rosemary McCool
Director



Bill Owens
Governor

Private Investigators Sunrise Application: Analysis of Proposed Competency Examination & Cost Estimates

The Colorado Department of Regulatory Agencies, Division of Registrations, Office of Examination Services analyzed factors related to the competency examination requirements proposed in the Sunrise application for the regulation of private investigators in Colorado. The analyses conducted by the Colorado Office of Examination Services (OES) focused on two main areas as follows:

- Whether the public needs, and can be reasonably expected to benefit from, an assurance of initial and continuing professional or occupational competence¹; and
- Cost estimates to develop and implement the competency examination proposed in the sunrise application filed by the Professional Private Investigators Association of Colorado (PPIAC), dated September 2005.

Proposed Competency Examination

The sunrise application submitted by the PPIA of Colorado reveals some seemingly logical but psychometrically inconsistent premises that commonly underlie assumptions about requirements for instituting a competency examination as a condition of entry to practice within a regulated profession. The primary psychometric issues related to what is required to develop, implement and make valid interpretations of results from licensure examinations are discussed below.

1. Requiring passage of a licensing examination does not necessarily assure that the public will be protected from unethical and/or incompetent practitioners.
 - a. Performance on licensing examinations typically does not render valid inferences that actual on-the-job performance will be of the highest ethical and professional standards. In fact, PPIA's sunrise research found this to be the case when it noted on page 5 of its sunrise application:
 - i. "In our polling of various states around Colorado that have license programs, we find that, even with a viable educational outreach to consumers, there exist issues of performance, contract problems, fee disputes, and violations of law."

¹ §24-34-104.1, C.R.S.

-
2. The valid interpretation of performance on licensing tests depends on the extent to which:
 - a. the knowledge and skills identified for credential-worthy performance in an occupation are consistent with the purposes for instituting a licensing program
 - b. the content purported to be assessed by each form of the licensing test represents adequately dimensions of the occupation that are believed to underlie safe and appropriate practice
 - c. the standard for passing each form of the licensing examination represents consistently valid distinctions between candidates that possess and candidates that do not possess the essential knowledge and skills thought to underlie credential-worthy performance within the occupation
 - d. evidence demonstrates informed standard setting and equating/linking of different forms of the licensing test
 - e. the compilation of data indicate acceptable reliability estimates and errors of measurement for each form of the licensing test
 - f. administrations of the licensing test forms demonstrate standardization and assure essentially comparable testing experiences
 - g. indicators of accurate scoring and results reporting
 - h. appropriate information management systems that store protected information accurately and in a manner that ensures security and confidentiality of test items and candidate records
 - i. The estimated costs to outsource and implement the development of a licensing examination program for private investigators are provided in Exhibit 1.
 3. Unlike interpretations of performance on curriculum achievement tests, performance on licensure tests is intended to be interpreted nominally as either a pass or fail status (see Exhibit 2). Licensing examinations aim to differentiate among candidates those whose test performance meets knowledge and skill standards at the minimum level believed necessary to be considered entry-level competent in a regulated occupation and thus, qualified to offer services to the public.
 4. Licensing examinations are designed to render interpretations of candidate performance that are precise in the vicinity of the pass/fail cut point (p. 157)²
 - a. Licensing examinations do not aim to indicate how badly a candidate failed or how well a candidate passed (p. 157)³. All candidates that "pass", regardless of

² American Educational Research Association, American Psychological Association, & National Council on Measurement in Education. (1999). Standards for educational and psychological tests. Washington, DC:

how well they passed or how close they came to the pass standard, are assumed to be equally qualified to offer their services to the public. Likewise, candidates that failed a licensing examination, no matter how close or how far their performance was with reference to the pass standard are deemed to be not qualified to offer their services to the public until such time they have demonstrated the minimum level of mastery of the essential knowledge and skills required to pass. Candidates that failed previous attempts on a licensing examination and eventually demonstrate the requisite mastery to pass the licensing examination are assumed to be as equally qualified to offer their services to the public as candidates that required fewer or more times to pass the licensing examination.

- b. Passage of a licensing examination does not guarantee "good performance will be offered" or "consumer protection will be ensured" when the practitioner is offering services in a regulated profession. If it can be shown that the licensing examination measures adequately the essential knowledge and skills at levels believed to be necessary for safe and appropriate practice in a regulated occupation, then a candidate that demonstrates the degree of mastery needed to pass the licensing examination may be identified as one who has met the minimal standards deemed to be necessary to be qualified to offer his or her services to public.

³ American Educational Research Association, American Psychological Association, & National Council on Measurement in Education. (1999). Standards for educational and psychological tests. Washington, DC:

Private Investigators Sunrise Application

EXHIBIT 1

Estimated Costs to Outsource & Implement New Licensing Examination Program

Develop RFP for Outsource Exam Development & Post ▪ 40 hours x 2 staff @ \$20/hr	\$1600
RFP Processing & Evaluation ▪ Set-up scoring applications, prepare evaluation materials & training: 5 hours x 2 staff @ \$25/hr ▪ RFP Team review, meetings, selection: 20 hrs x 7 staff @ \$20/hr	\$3050
Contract & Contract Execution ▪ Contract meeting for Statement of Work: 8 hours x 3 staff @ \$20/hr ▪ Draft Contract, signatures, execution: 15 hours x 2 staff @ \$20/hr	\$1080
Licensing System Requirements ▪ Determine system requirements: 2 hours x 2 staff @ \$25/hr ▪ Set-up Licensing system for new license by exam method: 2 hours x 2 staff @ \$25/hr	\$200
Occupational Analysis by Outsource Contractor ▪ Review content, SME meet, approval: 10 hours x 2 staff @ \$20/hr ▪ Report review, SME approval: 5 hours x 2 staff @ \$20/hr	\$600
Test Specifications by Outsource Contractor ▪ Review & SME meet: 8 hours x 2 staff @ \$20/hr ▪ Review, SME approve final test specifications: 2 hours x 2 staff @ \$25/hr	\$420
Board Approval: Test Items & Exam Forms ▪ Review items, SME approvals: 15 hour x 2 staff @ \$25/hr ▪ Review exam forms, SME approval: 10 hours x 2 staff @ \$25/hr	\$1250
Cut Score Setting & Board Approval ▪ Participate in SME cut score meeting: 8 hours x 2 staff @ \$25/hr ▪ Present to Board & approvals: 2 hours x 2 staff @ \$25/hr	\$500
Results Report Development & Approval	\$160

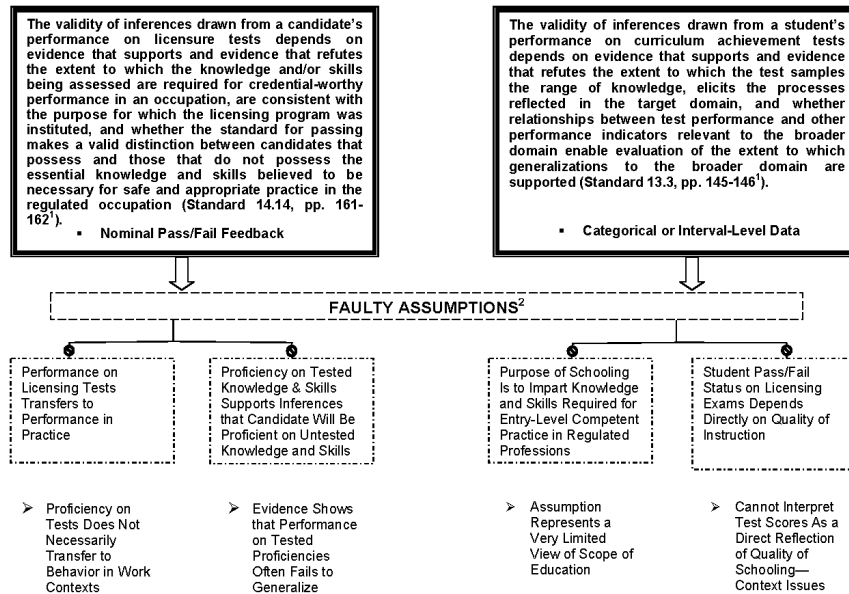
Private Investigators Sunrise Application

EXHIBIT 1

Estimated Costs to Outsource & Implement New Licensing Examination Program

▪ Design, review, approve: 4 hours x 2 staff @ \$20 /hr	
Communications Plan ▪ Board review and approve plan: 1 hour x 2 staff @ \$25/hr ▪ Review, approve Candidate Handbook: 8 hours x 2 staff @ \$20/hr ▪ Review, approve Web site for exam candidates: 5 hours x 2 staff @ \$20/hr ▪ Develop application materials, route, approvals: 15 hours x 3 staff @ \$15/hr ▪ Implement communications campaign: 10 hours x 3 staff @ \$15/hr	\$1695
Beta Test Examination Data File Receipt & Upload ▪ FTP process, test file uploads: 8 hrs x 1 staff @ \$20/hr	\$160
Beta Test Reporting Requirements ▪ Review, approve: 5 hours x 2 staff @ \$20/hr	\$200
Total Estimated Start Up Costs ▪ Assumes outsource new licensing examination program ▪ Does not include State-paid benefits to staff	\$10,915

**EXHIBIT 2: Distinguishing between Licensure vs. Curriculum Achievement Testing Programs:
Construct Interpretations Made On the Basis Of Test Performance**



¹American Educational Research Association, American Psychological Association, & National Council on Measurement in Education. (1999). Standards for educational and psychological tests. Washington, DC: American Educational Research Association.

²Haertel, E. H. (1999). Validity arguments for high-stakes testing: In search of the evidence. Educational Measurement: Issues and Practice, 18(4), 5-9.

Appendix B – Professional Private Investigators Association of Colorado Model Legislation

Proposed Model Legislation
Relating to the licensing of Private Investigators
Offered by The Professional Private Investigators Association of
Colorado, Inc. (PPIAC)

A Bill for an Act to Revise the Colorado Revised Statutes to Provide For
The Licensing of Private Investigators in the State of Colorado.

Section 1: Definitions

1. **“Department”** means the Colorado Department of Regulatory Agencies (DORA.)
2. **“Person”** means an individual, partnership, corporation or other business entity.
3. **“Private Investigator”** means any person who, for any consideration, engages in or solicits business or accepts employment to furnish, or agrees to make or makes any investigation to obtain, information with reference to any of the following or provides, or offers security of persons incident to any of the following:
 - A. Any crime or wrong committed or threatened against the laws or government of the United States, any state or territory, or political subdivision thereof.
 - B. The identity, habits, conduct, honesty, loyalty, movements, whereabouts, affiliations, associations, transactions, reputation or character of any living and/or dead person or entity.
 - C. Libels, fire, losses, accidents, or damage or injury to persons or property.
 - D. The locations, disposition or recovery of lost or stolen property.
 - E. Evidence to be used before any court, board, commission, office, investigative committee, or administrative agency or committee.
 - F. The identity or apprehension of persons suspected of crimes.
4. **“Licensed Private Investigator”** means any person licensed in Colorado, who has met the minimum requirements of 6,000 hours of experience and all other qualifications set forth by this title.
5. **“Licensed Associate Private Investigator”** means any person who is licensed under the provisions of this title and performs the work of a private investigator, but who has not achieved the minimum number of 6,000 hours of experience to qualify as a Licensed Private Investigator, but does meet all other requirements for licensing.

6. **“Independent Contractor”** means a person who performs services for another person under an express or implied agreement and who is not subject to the other's control, or right to control, or the manner and means of performing the services; and not as an employee.
7. **“Sub-Contractor”** means a person who performs services for another person under an express or implied agreement and who is subject to the other's control, right to control, and the manner and means of performing the service or services, but who is not a regular employee of the other.

Section 2: Exemptions

The term “Licensed Private Investigator” or “Licensed Associate Private Investigator” shall not include:

1. Certified law enforcement officers while engaged in the performance of their official duties.
2. Insurance adjusters, insurance appraisers and persons regularly employed as investigators exclusively by one insurance company.
3. Persons regularly employed as investigators exclusively by one employer in connection with the affairs of that employer only, provided that employer is not a private investigative agency.
4. Persons who perform service of process, so long as such service of process does not regularly entail the functions of a private investigator as outlined in Section 1.
5. Employees of a debt collection or credit reporting agency and persons otherwise engaged exclusively in the business of furnishing information as to the business and financial standing, and credit responsibility or worthiness of persons.
6. Attorneys engaged in the practice of law, and law clerks, paralegals and other laypersons regularly employed exclusively by one attorney or law firm when the attorney or law firm retains complete professional responsibility for the work product of the law clerk, paralegal or layperson in his or her employ.
7. Bail/Bond Agencies and their employees and agents exclusively engaged in the enforcement of arrest warrants and other related judicial orders.
8. Employees of the federal government, the state or any municipality in the performance of official duties.
9. News gathering agencies and their employees or agents.
10. A person engaged in compiling genealogical information exclusively from public records.
11. Persons providing marketing or demographic information.
12. Authors researching material for publication.

Section 3: Department Powers and Duties.

The Colorado Department of Regulatory Agencies shall:

1. Adopt rules necessary for the licensing and regulation of private investigators in Colorado. The Department shall seek input from private investigators and private investigative associations here in Colorado when drafting such rules.
2. Conduct hearings in connection with the issuance, renewal, denial, suspension, or revocation of a license.
3. Receive and review complaints and charges of unprofessional or unlawful conduct against any holder of a license or any application. The Department shall refer any valid complaints to the Attorney General's Office or the appropriate District Attorney for investigation.
4. Conduct examinations of all applicants and rule on the qualifications of applicants as needed.
5. Set license fees for both "Licensed Private Investigators" and "Licensed Associate Private Investigators" that insures the proper funding for the Department to oversee this program. All expenses for the oversight of this program will come from license fees collected by the Department. The Department will also utilize industry input for the setting of these fees.

Section 4: Licensing

The Department shall license all applicants who meet the following standards and any rules established by the Department:

1. Licensing standards and procedures shall be fair and reasonable and shall be designed and implemented to reasonably ensure an applicant's qualifications to practice the occupation. The standards and procedures shall not be designed to limit the number of persons who can apply for licensing.
2. No person shall engage in the business of private investigation as defined by this title without first obtaining a license to do so from the Department. The Department shall issue "Private Investigator License" and "Associate Private Investigator License" upon obtaining and approving the following:
 - A. An application filed on the proper form.
 - B. An application fee, as established by the Department.
 - C. Evidence that the applicant is at least 18 years old to be licensed as an Associate Private Investigator, and 21 years old to be a licensed as a Private Investigator.

- D. Applicant must be a United States citizen or a permanent legal resident of the United States.
- E. Two passport-size color photos of the applicant taken within 30 days of the date of the application.
- F. Evidence that the applicant has successfully passed an examination administered by the Department.
- G. All current private investigators practicing in Colorado at the time of implementation of the licensing requirement, and who have registered a formal business entity with the Secretary of State or the Department of Revenue 365 days prior to the enactment of this title and all employees of such business who otherwise meet the requirements of this title shall be licensed. Any testing requirement is waived, but a background check and all fees, as defined in this title, will be required.

Those with less than 6,000 hours of experience will be issued a Licensed Associate Private Investigator License and those with 6,000 hours or more of experience will be issued a Licensed Private Investigators License.

- H. Each applicant shall submit a finger print card and submit to a background check. Applicants must seek a law enforcement agency that will perform such a fingerprinting and pay the fee associated with such service. The background check will be through the Colorado Crime Information Center (CCIC) and the National Crime Information Center (NCIC) to determine if the applicant meets state standards set by the Department.
- I. No applicant can be approved for licensing if the criminal background check reveals a felony conviction. Other convictions of a lesser degree will be ruled upon by the Department.
- J. The applicant must list professional and educational background experience on the application. In determining whether an applicant is to qualify as a Licensed Private Investigator or a Licensed Associate Private Investigator, the Department shall use such criteria as:
 - a) Previous, relevant experience
 - b) Licensure in another state
 - c) Certified member of a law enforcement agency acting in an investigative capacity
 - d) Past operational experience as a private investigator in Colorado that was gained prior to adoption of this title
 - e) Any other requirement that may be set forth by the Department.
- K. An application can be denied upon failure by the applicant to provide information required by the Department or upon determination by the Department that the applicant fails to meet licensing criteria.

- L. Licenses shall be issued for a two-year period, beginning on the 1st day of the month of licensure.
- M. A license may be renewed up to 30 days after the expiration date with no penalty. Each renewal application must be accompanied by two passport-size color photographs of the applicant that were taken within 30 days of the filing of the renewal application. Any license renewal that is submitted 90 days past the expiration date will be rejected. Renewal then will entail the filing of a new license application with the Department, including all fees and requirements of an original licensing application.

A \$100 late fee will be assessed for any renewal application submitted after the 30-day grace period date but before the 90-day cutoff date.
- N. Any Licensed Private Investigator who has Licensed Associate Private Investigators under their control and supervision are responsible for the actions and conduct of such licensees. As such, the license of such a private investigator may be suspended and/or revoked for actions of the licensed employees.
- O. The Department shall issue a license and a pocket identification card to each licensed investigator. The license and the pocket identification card will identify the type of license: Licensed Associate Private Investigator or Licensed Private Investigator. The pocket identification card will include a color photo of the licensee. The license must be conspicuously displayed at the business place of each licensed investigator. The pocket identification card will be presented whenever a licensed investigator is asked to verify that he or she is a licensed investigator.

Section 5: Employees

1. A Licensed Associate Private Investigator may employ persons whose duties are administrative, but no Licensed Associate Private Investigator is permitted to employ or supervise other licensed investigative personnel. The employment restriction notwithstanding, a Licensed Associate Private Investigator may establish a temporary or formal business relationship with other licensed investigators.
2. A Licensed Private Investigator may employ such other persons as deemed necessary. The Licensed Private Investigator who employs other licensed investigators shall be responsible for the work product and conduct of any such licensed employees.
3. Employees of Licensed Private Investigators and Licensed Associate Private Investigators whose duties are administrative need not be licensed. Such employees may include secretaries, administrative assistants, typists or transcribers, drivers, clerks, runners, document retrievers, and the like. Such persons may perform any duty that does not entail or constitute the initiation or generation of information that is to become part of an investigative report.

4. The practice of "Independent Contracting" is not permitted. The practice of "Subcontracting" is permitted. Also, any licensed investigator may refer work to other licensed investigators. Such a referral only may be made with the express notification to and approval of the client.

Section 6: Reciprocity

The Department by rule may enter into a reciprocal agreement with the appropriate official of any other state to allow a licensed private investigator from that state to operate in Colorado, if the Department finds that the licensing requirements for that state are similar to or greater than those in force in Colorado.

Section 7: Reinstatement

A person whose license has lapsed or has been suspended for more than 90 days, or has been terminated for any reason shall only be reinstated upon filing a new application and meeting all requirements for initial licensing. Any person whose license has been revoked by the Department may not reapply for licensure for one year from the date of revocation or whatever timeframe the Department has established for that particular revocation action through the hearing process.

Section 8: Violations/Penalties:

1. Persons who hold themselves out as engaging in the business of private investigations without having obtained a license shall be guilty of violating C.R.S.6-1-205 (1) (b), (c), (e) and (l) and punishable as prescribed in law for these violations. (Colorado Consumer Protection Act).
2. Any licensed investigator found guilty of misconduct or violations of law, by the rules established by the Department, will be subject to suspension or revocation of a license.
3. All disciplinary hearings will be confidential until conclusion, but all disciplinary action taken against licensed investigators or those posing as licensed investigators will be subject to public notice or publication as may be deemed appropriate by the Department.
4. When an investigator licensed in Colorado is disciplined and such investigator also is licensed in other states, the appropriate licensing agency in those other states will be notified by the Department of the action taken in Colorado.