

Fifty-eighth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1159

Introduced by

Industry, Business and Labor Committee

(At the request of the Private Investigative and Security Board)

1 A BILL for an Act to create and enact a new section to chapter 43-30 of the North Dakota
2 Century Code, relating to unlicensed practice as a private investigative or security service; to
3 amend and reenact sections 43-30-01, 43-30-02, 43-30-03, 43-30-10, and 43-30-12, relating to
4 the jurisdiction of the private investigative and security board; and to provide a penalty.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 43-30-01 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **43-30-01. Definitions.** As used in this chapter, unless the context or subject matter
9 otherwise requires:

- 10 1. "Board" means the private investigative and security board.
- 11 2. "Employee" means to be in an employer and employee relationship in which the
12 employee is providing work in exchange for compensation and the employer
13 directly controls the employee's conduct and pays some taxes on behalf of the
14 employee. The term "employed" may not be construed to include independent
15 contractors.
- 16 3. "License" includes a registration issued by the board.
- 17 3- 4. "Licensee" includes an individual who is registered by the board.
- 18 4- 5. "Private investigative service" means ~~obtaining or furnishing information with~~
19 ~~reference to any act or individual~~ for a fee, reward, or other consideration,
20 undertaking any of the following acts for the purpose of obtaining information for
21 others:
 - 22 a. Investigating the identity, habits, conduct, movements, whereabouts,
23 transactions, reputation, or character of a person or organization;
 - 24 b. Investigating the credibility of persons;

- c. Investigating the location or recovery of lost or stolen property, missing persons, owners of abandoned property or escheated property, or heirs to estates;
- d. Investigating the origin of and responsibility for libels, losses, accidents, or damage or injuries to persons or property;
- e. Investigating the affiliation, connection, or relationship of a person, firm, or corporation with an organization, society, or association, or with an official, representative, or member thereof;
- f. Investigating the conduct, honesty, efficiency, loyalty, or activities of employees, persons seeking employment, agents, or contractors and subcontractors;
- g. Obtaining through investigation evidence to be used before an authorized investigating committee, board of award, board of arbitration, administrative body, or officer or in preparation for trial of civil or criminal cases; or
- h. Investigation of the identity or apprehension of persons suspected of crimes or wrongdoing.

5- 6. "Private security service" means furnishing for hire security officers or other persons to ~~protect persons or property, or to prevent the~~

- a. Protect person or property;
- b. Prevent or detect theft, or the unlawful taking of goods, wares, and merchandise, or to prevent the misappropriation or concealment of goods, wares, merchandise, money, bonds, stocks, choses in action, notes, or other valuable documents or papers, or the business of performing the service of such security officer or other person for any of these purposes;
- c. Control, regulate, or direct the flow of or movements of the public, whether by vehicle or otherwise, to assure protection of private property;
- d. Prevent or detect intrusion, unauthorized entry or activity, vandalism, or trespass on private property;
- e. Engage in the business of performing the service of security officer or other person for any of these purposes; or

- f. Transport money or negotiable securities to or from a financial institution or between business locations on a regular or daily basis, except for mail delivery.

SECTION 2. AMENDMENT. Section 43-30-02 of the North Dakota Century Code is amended and reenacted as follows:

43-30-02. Exemptions. This chapter does not apply to:

1. Any investigator or officer directly employed by or under any direct contract with the federal government, state, or any county or city thereof, appointed, elected, or contracted with, by due authority of law, while engaged in the performance of official duties. Subcontractors of agencies directly contracted with these entities are not exempted.
2. Any state's attorney.
3. Any attorneys or counselors at law in the regular practice of their profession and any paralegal or legal assistant employed by an attorney or law firm when the attorney or law firm retains complete responsibility for the work product of the paralegal or legal assistant.
4. ~~Any person whose sole investigative business is the furnishing of information as to the business and financial standing and credit of persons~~ Persons engaged exclusively in obtaining and furnishing information as to the financial standing, rating, and credit responsibility of persons or as to the personal habits and financial responsibilities of applicants for insurance, indemnity bonds, or commercial credit.
5. A collection agency or finance company licensed to do business under the laws of this state, or an employee of one of those companies, while acting within the scope of employment when making an investigation incidental to the business of the agency, including an investigation as to location of a debtor or of the debtor's assets or property, provided the client has a financial interest in or a lien upon the assets or property of the debtor.
6. Any person making any investigation of any matter in which that person or ~~the person by whom that person is solely employed~~ person's employer is legally interested or is directly involved.

- 1 6. ~~Any person making any investigation for any person engaged in the business of~~
2 ~~transporting persons or property in interstate commerce.~~
- 3 7. ~~Any adjuster or investigator representing an insurance company.~~
- 4 8. A person whose sole investigative business is obtaining or furnishing information
5 about acts or individuals from public records-, other than those investigating the
6 location or recovery of owners of abandoned property or escheated property, or
7 heirs to estates.
- 8 8. An expert who specializes in a specific, limited area of practice, to include
9 automotive accident reconstructions, fire cause and origin inspections, technical
10 surveillance countermeasures, handwriting analysis, auditor, accountant or
11 accounting clerk performing audits or accounting functions, or other areas of
12 practice covered by other licensure in the state, and other areas determined by the
13 board, which fall within the individual's scope of employment, incidental to the
14 investigative profession.
- 15 9. A person testing for fair housing compliance who has a state and nationwide
16 criminal history record check with the federal bureau of investigation for federal
17 purposes and with the bureau of criminal investigation for state purposes on file
18 with the person's sponsoring organization, provided that upon request the board
19 may review the criminal history background checks.
- 20 10. A person engaged in conducting or gathering objective observations of consumer
21 purchases of products and or services in the public environments of a business,
22 and a mystery and or secret shopper used for gathering information relative to
23 marketing, demographic, competitive, and customer service or satisfaction
24 purposes.
- 25 11. A person reporting for any media, including a news reporter or news investigator.

26 **SECTION 3. AMENDMENT.** Section 43-30-03 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **43-30-03. Private investigative and security board.** The governor shall appoint a
29 private investigative and security board. The board must consist of not less than five nor more
30 than eleven members appointed for staggered four-year terms. Appointees to the board must
31 be knowledgeable in private investigative or private security matters. A majority of the

members of the board must be actively engaged in the private investigative or security profession with at least one member actively engaged in law enforcement. Members of the board may not receive any compensation for their service on the board, but they are entitled to be reimbursed for their expenses incurred in performing their duties in the amounts provided by law for state employees.

SECTION 4. AMENDMENT. Section 43-30-10 of the North Dakota Century Code is amended and reenacted as follows:

43-30-10. Penalty - Injunction - Unlicensed activity. Any person who violates this chapter, or the rules adopted under this chapter, or any person who provides a private investigative service or private security service without a current license issued by the board, or falsely states or represents that the person has been or is an investigative officer or employed by an investigative or security officer or agency is guilty of a class ~~B~~ A misdemeanor. In addition to the criminal penalties provided, the civil remedy of an injunction is available to restrain and enjoin violations of any provisions of this chapter, without proof of actual damages sustained by any person. Such an injunction:

1. Does not preclude criminal prosecution and punishment of a violator;
2. Does not subject the board to liability for the lost income, costs, or any other expenses which may be incurred by a person against whom an injunction is sought, and the board may not be required to provide security or a bond; and
3. Includes the right for the board to seek costs for reimbursement of expenses for obtaining the injunction.

In addition to issuing the injunction, the court may impose a civil penalty not to exceed ten thousand dollars per violation, if the person has violated a provision of this chapter.

SECTION 5. A new section to chapter 43-30 of the North Dakota Century Code is created and enacted as follows:

Issuance of citations for unauthorized practice - Administrative fine - Appeal.

1. The board may issue a citation to a person that it finds probable cause to believe has violated section 43-30-10.
2. Such a citation must be in writing and describe with particularity the nature of the violation. The citation must also inform the person of the provisions of subsection 5. A separate citation must be issued for each such violation.

- 1 3. If appropriate, the citation must contain an order of abatement fixing a reasonable
2 time for abatement of the violation.
- 3 4. The board may assess an administrative fee of:
 - 4 a. For the first such violation, not more than one thousand dollars.
 - 5 b. For the second such violation, not more than two thousand five hundred
6 dollars.
 - 7 c. For the third or subsequent such violation, not more than five thousand
8 dollars.
- 9 5. To appeal the finding of such a violation, the person must request a hearing by
10 written notice of appeal to the board within thirty days after the date of issuance of
11 the citation.
- 12 6. An appeal must be heard under the procedures contained in chapter 28-32.
- 13 7. Such a citation does not preclude a civil injunction or the criminal prosecution and
14 punishment of a violator.

15 **SECTION 6. AMENDMENT.** Section 43-30-12 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **43-30-12. Disciplinary action.** The board may refuse to grant or renew a license,
18 suspend, or revoke a license, or place on probationary status any licensee, or issue a letter of
19 reprimand to any licensee, for any one or any combination of the following causes:

- 20 1. Fraud in obtaining a license.
- 21 2. Violation of this chapter or rules adopted which implement section 43-30-04.
- 22 3. If the holder of any license or a member of any copartnership, an officer of any
23 corporation, or a manager of any limited liability company has been adjudged guilty
24 of the commission of an offense determined by the board to have a direct bearing
25 upon a holder's ability to serve the public as a private investigative or security
26 agency, or if the board determines that, following conviction of any offense, the
27 holder is not sufficiently rehabilitated under section 12.1-33-02.1.
- 28 4. Upon the disqualification or insolvency of the surety of the licenseholder.
- 29 5. A person licensed, certified, or registered by the board pursuant to this chapter
30 who violates any statute or board regulation and who is not criminally prosecuted
31 is subject to the monetary penalty provided in this section. If the board determines

1 that a respondent is guilty of the violation complained of, the board shall determine
2 the amount of the monetary penalty for the violation, which may not exceed two
3 thousand five hundred dollars for each violation. The penalty may be sued for and
4 recovered in the name of the board. The monetary penalty must be paid into the
5 board's general fund.

6 The board may impose a fee on any person subject to regulation under this chapter to
7 reimburse the board for all or part of the costs of administrative actions resulting in disciplinary
8 action, including the amount paid by the board for services from the office of administrative
9 hearings, attorney's fees, court costs, witness fees, staff time, and other expenses.