

## CHAPTER 43-30 INVESTIGATIVE AND SECURITY SERVICES

### **43-30-01. Definitions.**

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the private investigative and security board.
2. "Employee" means an employee under a contract of employment as defined in chapter 34-01, and not an independent contractor as defined by the common-law test.
3. "Executive director" means a person appointed by the board on a full-time or part-time basis to be responsible and accountable to the board for the proper administration of the board's duties.
4. "License" includes a registration issued by the board.
5. "Licensee" includes an individual who is registered by the board.
6. "Private investigative service" means, for a fee, reward, or other consideration, undertaking any of the following acts for the purpose of obtaining information for others:
  - a. Investigating the identity, habits, conduct, movements, whereabouts, transactions, reputation, or character of any person or organization;
  - 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 any person, firm, or corporation with any organization, society, or association, or with any 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. Investigating or obtaining evidence to be used before any 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. Investigating the identity or location of persons suspected of crimes or wrongdoing.
7. "Private security service" means furnishing for hire security officers or other persons to:
  - a. Protect persons or property;
  - b. Prevent or detect theft or the unlawful taking of goods, wares, or 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;
  - 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. Perform the service of a 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.

### **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 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 and 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 is interested or involved.
7. A person whose sole investigative business is obtaining or furnishing information about acts or individuals from public records, other than those investigating the location or recovery of abandoned or escheated property, owners of abandoned or escheated property, or heirs to estates.
8. An expert who specializes in a specific, limited area of practice, including automotive accident reconstructions, fire origin and cause investigations, technical surveillance countermeasures, handwriting analysis, auditor, accountant or accounting clerk performing audits or accounting functions, or other areas of practice covered by other licensure in the state, and other areas determined by the board, that fall within the individual's scope of employment, incidental to the investigative profession.
9. Persons reporting for any media, including news reporters or news investigators.
10. A person providing mystery or secret shopping services, or providing a similar service, used for evaluating customer service, products, services, pricing, locations, or consumer issues so long as the evaluation is not for purposes of litigation or discovering violations of law.

#### **43-30-02.1. Fair housing law compliance - Exception - Penalty.**

This chapter does not apply to a person testing for fair housing law compliance who is employed by or volunteers with an organization recognized for this purpose under federal or state law and who meets the requirements, except for actual registration, of a registered private investigator established by the board. These requirements include a state and nationwide criminal history background record check conducted by the bureau of criminal investigation and the federal bureau of investigation. The results of the state and nationwide criminal history background record check must be on file with the organization. The board, at its request, may review the criminal history background record check and other information related to any person conducting the compliance test. Any person who knowingly violates the requirements for an exception under this section is guilty of a class B misdemeanor.

#### **43-30-02.2. Proprietary security.**

A proprietary employer is a person who employs an individual to provide security for that person's own property or protection. A proprietary employer is not required to be licensed as a private security service if the employer does not offer or provide security services to others. Proprietary security employees may be voluntarily registered as security officers under section 43-30-06. In order to be registered as a proprietary security officer, an employee must meet all of the requirements to be registered as a security officer except for:

1. Employment by a licensed private security service; and
2. Supervision by an individual who is licensed to provide security services.

#### **43-30-03. Private investigative and security board.**

The governor shall appoint a private investigative and security board. The board must consist of not fewer than five nor more than eleven members appointed for staggered four-year terms. When making appointments, the governor shall consider whether there is member representation from the western, central, and eastern geographic regions of the state. Each member of the board must 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 compensation for service on the board, but are entitled to receive reimbursement for expenses incurred in performing official duties in the amounts provided by law for state employees.

#### **43-30-04. Powers of the board.**

1. The board shall establish by rule the qualifications and procedures for classifying, qualifying, licensing, bonding, and regulating persons providing private investigative and security services, including armed security personnel. The rules adopted under this section addressing qualifications of security officers must recognize active members of the national guard and former members of the national guard, reserve, or regular armed forces of the United States, who were not dishonorably discharged, as having met any related experience requirements. All rules adopted by the board and appeals therefrom must be in accordance with chapter 28-32.
2. The board may hire office personnel deemed necessary by it for carrying on its official duties and shall set the compensation to be paid to the personnel.

#### **43-30-04.1. Continuing education requirements.**

The board may adopt rules establishing the requirements for the continuing education of persons licensed under this chapter. The board may refuse to renew, suspend, or revoke any license issued under this chapter or place on probationary status any licensee on proof that the licensee has failed to meet the applicable continuing education requirements. Applicants for accreditation of continuing education courses, classes, or activities may be charged a reasonable fee as determined by the board.

#### **43-30-05. License required to provide private investigative or security services - Exclusivity.**

A person may not provide private investigative or security services without a license issued by the board. Notwithstanding any other law or ordinance, a person may not be required to obtain a license to provide private investigative or security services in this state other than the license required by this chapter.

#### **43-30-05.1. Temporary license or registration.**

The board may issue a temporary license or registration upon payment of the required application fee and satisfaction of all other requirements set by the board for licensure or registration under this chapter except for completion of a nationwide criminal history record check on the applicant under section 43-30-06. A temporary license or registration issued under this section expires without further action by the board on the date the board receives the results of the nationwide criminal history record check on the applicant. An additional fee may not be charged for the temporary license or registration, but an application fee is not refundable if the board denies the application.

#### **43-30-05.2. Peace officers.**

Notwithstanding section 12.1-13-04, the board may issue a license to an individual who is a peace officer if the license issued to that peace officer under chapter 12-63 is on inactive status.

#### **43-30-06. License and registration applications.**

Every person who desires to obtain a license or registration, including nonlicensed members, partners, officers, and owners of at least ten percent interest in the entity, shall apply to the board on applications prepared and furnished by the board. Each application must include the information required by the board and must be accompanied by the required fee. As a requirement of receiving a license or registration, the board shall require each applicant to submit to a state and nationwide criminal history background record check. The nationwide criminal history background record check must be conducted in the manner provided in section 12-60-24. All costs associated with the criminal history background record check are the responsibility of the applicant. Criminal history records provided to the board pursuant to this section are confidential and closed to the public and may be used by the board for the sole purpose of determining an applicant's eligibility for licensure and obtaining documentation to support a denial of licensure. A criminal history background record check is not required under this section if an applicant for registration has previously been the subject of a state and nationwide criminal history background record check, has held a registration issued by the board within the sixty days immediately preceding the application, and is applying for a new registration due solely to a change in employment. A nationwide criminal history background record check is not required under this section if an applicant for licensure or registration provides to the board the results of a nationwide criminal history background record check performed by the federal bureau of investigation at the request of another state and if the nationwide criminal history background record check was performed within the sixty days immediately preceding the date of the application. A state criminal history background record check is not required under this section if an applicant for registration provides to the board the results of a state criminal history background record check performed by the state in which the applicant currently resides and if the state criminal history background record check was performed within the sixty days immediately preceding the date of the application.

#### **43-30-07. Contents of license - Posting.**

Repealed by S.L. 1983, ch. 487, § 13.

#### **43-30-08. Duplicate licenses.**

If a loss of a license is shown to the satisfaction of the board, a duplicate thereof must be issued by the board upon payment of the required fee.

#### **43-30-09. Detective agency license.**

The board may establish by rule the procedures to be followed by a private investigator to operate a detective agency.

#### **43-30-10. Penalty - Injunction - Unlicensed activity.**

Any person who violates this chapter or 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 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. An injunction does not preclude criminal prosecution and punishment of a violator. The board is not liable for the lost income, costs, or any other expenses that 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. The board may seek costs for reimbursement of expenses for obtaining an injunction, including attorney's fees. In addition to issuing the injunction, the court may impose an administrative fee consistent with section 43-30-10.1 if the person has violated a provision of this chapter. The board may seek an injunction, impose administrative fees, or seek an order of abatement through an administrative action or in district court.

**43-30-10.1. Issuance of citations for unauthorized practice - Administrative fee - Appeal.**

1. The board may issue a citation to a person who the board finds probable cause to believe has violated section 43-30-10.
2. 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 violation.
3. If appropriate, the citation must contain an order of abatement fixing a reasonable time for abatement of the violation.
4. The board may assess an administrative fee of:
  - a. For the first violation, up to two hundred fifty dollars.
  - b. For the second violation, up to five hundred dollars.
  - c. For the third or subsequent violation, up to one thousand dollars.
5. To appeal the finding of a violation, the person must request a hearing by written notice of appeal to the board within thirty days after the date of issuance of the citation.
6. An appeal must be heard under the procedures contained in chapter 28-32, unless the citation is brought in district court.
7. A citation does not preclude a civil injunction or the criminal prosecution and punishment of a violator.

**43-30-11. Renewal of licenses.**

A license to provide private investigative or security services must be renewed on an annual basis ending on September thirtieth of each year. License fees must be prorated for the portion of each license period the license is in effect.

**43-30-12. Disciplinary action.**

The board may refuse to renew, suspend, or revoke a license, or place on probationary status any licensee, or issue a letter of reprimand to any licensee, for any one or any combination of the following causes:

1. Fraud in obtaining a license.
2. Violation of this chapter or rules adopted which implement section 43-30-04.
3. If the holder of any license or a member of any copartnership, an officer of any corporation, or a manager of any limited liability company has been adjudged guilty of the commission of an offense determined by the board to have a direct bearing upon a holder's ability to serve the public as a private investigative or security agency, or if the board determines that, following conviction of any offense, the holder is not sufficiently rehabilitated under section 12.1-33-02.1.
4. Upon the disqualification or insolvency of the surety of the licenseholder.
5. Any person licensed, certified, or registered by the board pursuant to this chapter who violates any statute or board regulation and who is not criminally prosecuted is subject to a monetary penalty, which may be assessed at a hearing under the procedures contained in chapter 28-32. If the board determines that a respondent is guilty of the violation complained of, the board shall determine the amount of the monetary penalty for the violation, which may not exceed two thousand five hundred dollars for each violation. The penalty may be sued for and recovered in the name of the board. The monetary penalty must be paid into the board's general fund.

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

**43-30-13. Notice and hearing on license revocation.**

The board may, upon its own motion, and shall, upon the verified complaint in writing of any person setting forth facts which, if proven, would constitute a violation of this chapter or rules adopted by the board, investigate the actions of any person holding or claiming to hold a

license. The board shall, before refusing to issue, suspending, revoking, or taking any other licensure action, notify in writing the applicant or holder of the license of any charges made and shall afford the accused person an opportunity to be heard in person or by counsel in reference thereto. The written notice may be served by personal delivery to the accused person, or by registered mail to the place of business specified by the accused person in the person's last notification to the board. At the time and place fixed in the notice, the board shall proceed to hearing of the charges and both the accused person and the complainant must be accorded ample opportunity to present in person or by counsel such statements, testimony, evidence, and argument as may be pertinent to the charges or to any defense thereto. The board may continue the hearing from time to time.

**43-30-14. Hearing powers.**

The board may subpoena any person in this state and take testimony either orally or by deposition, or both, with the same fees and mileage and in the same manner as prescribed by law in judicial procedure in civil cases in courts of this state.

**43-30-15. Application of chapter 28-32.**

Chapter 28-32 governs the procedures under this chapter. Any decision made by the board under section 43-30-12 is governed by chapter 28-32.

**43-30-16. Examination, license, and registration fees.**

The board may establish by rule and charge the following fees:

1. The fee to be paid by an applicant for an examination to determine the applicant's fitness to receive a license as a private investigator or a license to provide private security services may not exceed one hundred dollars.
2. The fee to be paid by an applicant for the initial issuance or the renewal of a license as a private investigator or a license to provide private security services may not exceed one hundred fifty dollars. A late fee not to exceed fifty dollars may be charged for each month the renewal fee is due and unpaid.
3. The fee to be paid by an applicant to apply for a license to conduct a private security or detective agency may not exceed one hundred dollars.
4. The fee for the issuance or the renewal of a license to conduct a private security or detective agency may not exceed three hundred dollars. A late fee not to exceed one hundred dollars may be charged for each month the renewal fee is due and unpaid.
5. The one-time fee to be paid by an applicant for the issuance of a private security training certificate may not exceed twenty-five dollars.
6. The annual fee to be paid by an applicant for the issuance of an armed certificate may not exceed thirty dollars. A late fee not to exceed ten dollars may be charged for each month the renewal fee is due and unpaid.
7. The fee to be paid for the issuance of a duplicate license may not exceed twenty dollars.
8. The initial registration fee to provide private investigative service or private security service may not exceed thirty dollars. The fee for the renewal of a registration to provide private investigative service or private security service may not exceed thirty dollars. A late fee not to exceed ten dollars may be charged for each month the renewal fee is due and unpaid.
9. The initial application fee for a certified course instructor for an armed first responder training certification may not exceed four hundred dollars. A fee for renewal of a course instructor certification for an armed first responder program may not exceed three hundred dollars.