

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

HOUSE BILL NO. 1165
(Government and Veterans Affairs Committee)
(At the request of the Private Investigative and Security Board)

AN ACT to create and enact a new section to chapter 43-30 of the North Dakota Century Code, relating to exceptions to private investigative services licensing; to amend and reenact sections 43-30-01, 43-30-02, and 43-30-03 of the North Dakota Century Code, relating to licensing persons engaged in private investigative service or private security service; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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. "License" includes a registration issued by the board.
3. 4. "Licensee" includes an individual who is registered by the board.
4. 5. "Private investigative service" means ~~obtaining or furnishing information with reference to any act or individual~~, 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.

5. 6. "Private security service" means furnishing for hire security officers or other persons to ~~protect:~~
- a. Protect persons or property, or to prevent the;
 - b. Prevent or detect theft or the unlawful taking of goods, wares, and 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, 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. 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.

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~~ 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.
- 5. 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.
- 6. ~~Any person making any investigation for any person engaged in the business of transporting persons or property in interstate commerce.~~
- 7. ~~Any adjuster or investigator representing an insurance company.~~

- ~~8.~~ 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 cause and origin inspections, technical surveillance counter measures, 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.

SECTION 3. A new section to chapter 43-30 of the North Dakota Century Code is created and enacted as follows:

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 check conducted by the bureau of criminal investigation and the federal bureau of investigation. The results of the state and nationwide criminal history background check must be on file with the organization. The board, at its request, may review the criminal history background 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.

SECTION 4. AMENDMENT. Section 43-30-03 of the North Dakota Century Code is amended and reenacted as follows:

43-30-03. Private investigative and security board. The governor shall appoint a private investigative and security board. The board must consist of not less than five nor more than eleven members appointed for staggered four-year terms. Appointees to 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 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.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1165.

House Vote: Yeas 88 Nays 0 Absent 6

Senate Vote: Yeas 45 Nays 0 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,

at _____ o'clock _____ M.

Secretary of State