

2011 HOUSE JUDICIARY

HB 1433

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1433  
January 31, 2011  
13711

☐ Conference Committee

Committee Clerk Signature



## Minutes:

Chairman DeKrey: We will open the hearing on HB 1433.

Rep. Lois Delmore: I am here on behalf of the sponsor, Rep. S. Meyer, support (see attached 1, 2, 3).

Chairman DeKrey: Thank you. Further testimony in support.

Larry Johnson, citizen: I got licensed in law enforcement in ND in 1986. I spent 16 years as Belfield's police chief, 21 years with the Belfield Volunteer Ambulance as an EMT. When I retired from law enforcement, I decided that I was going to keep my law enforcement license current, so I continue with training hours necessary to keep renewing that license and there was an incident where I was working in Medora, at the Badlands Bible Camp, when I found out that I was in violation of the law; because I could not be doing that type of work, policing a dance, unless I either worked for the law enforcement agency who has jurisdiction there and it can be federal, state, county or municipal law enforcement or I had to surrender my law enforcement license back to the Post Board. At that same dance, I was approached by the director of the Alumni Association at Dickinson State University, who was impressed with the quality of my work and he asked me if I could do the security work for their tailgate parties at their football games in Dickinson. Initially I agreed and then when it came out that I would be in violation unless I went to work for the Dickinson Police Dept., I told him that I had to back away from it, so I'm out of that income. Chapter 43 of the NDCC is basically pretty well written and well thought out. All we're asking the Legislature to do is to tweak that one paragraph that dictates we surrender our law enforcement license if we're going to police a dance. The way I understand the law is written, in talking to Rep. Meyer, that the law enforcement credentials that we have, at the time, will be placed in a state of suspension for that period of time. Once the dance is over, and we go home, if I want to I can go back to work for the Belfield Police Dept. I am also a Stark County Reserve Deputy at this time, doing transports for prisoners and mental health cases. It's important that I be allowed to keep my law enforcement license, but I don't feel and there are others in the boat with me, one of whom is Roger Clemens, a retired

Highway Patrolmen, who lives south of Medora and is in the same boat I am. We don't feel that we are breaking anybody's rice bowl; we're not a threat to the people doing security work. I did talk to the State's attorney in Stark County, Tom Henning; he's the one who pulled the statute out of the NDCC for me so we could look at it. He was quite surprised that that rule was in effect. He indicated to me, at that time, he'd rather have somebody who has a little more training and experience doing that kind of work at dances, than somebody with a couple of hours of training and a flashlight. We're trying to tweak that one paragraph in section 43 of the NDCC. The rest of it will remain as it has been written.

Rep. Brabandt: When you discovered you were in violation, did you discover it on your own or were you informed.

Larry Johnson: I was informed. Once I was informed, I made a more diligent effort to do my homework to make sure that my informant was correct, and he was.

Chairman DeKrey: Thank you. Further testimony in support of HB 1433. Testimony in opposition to HB 1433.

Francine Johnson, Executive Director, ND Private Investigation & Security Board: Opposed. We regulate the private investigation and security industry. With regard to this bill, the reason behind law enforcement having to surrender their license, is specifically prohibited (I believe the prohibitions were passed out). Those individuals still have police-type powers and have access to law enforcement records. The thought process, as far as maintaining or excluding those individuals from becoming licensed is so that, in most cases, there is no line drawn as to when an off-duty police officer is wearing the hat of being a police officer or is he a security employee. This is a very gray area. The police-type powers never cease. In addition to that, the security industry has felt, for as long as I have been associated with the Board, that there is a conflict of interest there, and they have an unfair advantage over those that have tested and become licensed security providers. We already license inactive law enforcement personnel, if you've retired and no longer have the police-type powers; you take the same exam as anyone else out there, provided you meet the standards of licensing and provide insurance and can provide those services. The same is true within the security industry. You can become a security officer, which means that you are registered under an already established licensed security agency that has met the Board's criteria and you can then moonlight as a registered security officer policing a dance, etc. provided you do not have those police-type powers. We are opposed to having law enforcement becoming licensed security providers and licensed private investigators strictly for the purposes of, they have police-type powers.

Chairman DeKrey: That advantage that you talked about, wouldn't that be an asset to them, that they had all this training and firearms training. Wouldn't that make them more qualified to do something like that on off-duty hours.

Francine Johnson: It does in the experience aspect of it, as far as them knowing what they can and can't do, but the average citizen, how would they know am I talking to John Doe, who is a police officer with the city of Medora and he's asking me these questions, or am I talking to him as a private investigator, that has hired him for private purposes. There is no distinction for the average citizen to say, well do I really have to tell him what I know or even going as far as the Mirandizing. At what point is that police officer acting as a private investigator vs. a police officer.

Rep. Klemin: Is there a distinction between working as a security guard and being a private investigative person.

Francine Johnson: There is. There are two different licenses and two separate requirements. The hours of training are different for the security provider, the hours of training required for a private investigator is different.

Rep. Klemin: This prohibition that we're looking at here, does that apply only to private investigative services or does it also apply to being a security guard.

Francine Johnson: Yes, it also provides for the security provider. We license and we register. A security provider is a licensed holder. The security provider license is the individual that holds the license for the entire company. We are prohibiting those individuals who are involved in law enforcement to hold the license. We are not prohibiting them from being an employee of an already established licensed agency. So Mr. Johnson could be a security guard for a licensed holder or a security provider license holder, but he could not himself hold the license.

Rep. Klemin: So if a person, such as Mr. Johnson's wife, would hold the license as the security provider, he could work for her as a security guard.

Francine Johnson: Absolutely, provided she met the standards of training, experience, and took the exam and had the insurance; met all those stipulations and requirements yes.

Rep. Delmore: What are the fees and training that you would require Mr. Johnson to go through when he's already probably done a lot of that type of training that you're talking about.

Francine Johnson: The training requirement that he would most likely put forward for a security provider, they would have to prove 4,000 hours of security experience and have 80 classroom hours of instruction. He most likely would meet all of those standards based on his law enforcement experience, and we've had several that have come into that industry just under those circumstances. We take that as an equivalency. He then must pass the exam that's administered by our Board, if he passes the exam and has proof of insurance, he has to have a \$300,000 insurance commercial liability policy to include errors and omissions and then he must pay the license fees, \$130 for his individual status license, and \$250 for his agency status

license. So he's looking at \$382 on a yearly basis for his license to operate as a security provider. That's the license fee itself to make application, testing fee, and criminal records searches that we require is an additional one-time fee of \$152.00.

Rep. Delmore: Don't you think that is asking quite a bit of money and training from somebody who may be doing something very part-time, that they aren't paid very much to do, but they are trying to act in good service to a community.

Francine Johnson: I would venture to say that the private sector is also doing the same type of service and willing to put forward those types of security efforts in providing a service to a community and having the same or similar background and qualifications.

Rep. Delmore: Is there a lack of people in some parts of the state who could do this type of work.

Francine Johnson: I would venture to say that the western portion of the state is having difficulty holding any type of security officers due to the oil industry. That's probably not an issue that only the security industry is facing. I imagine McDonalds and Burger King are facing the same problems.

Rep. Delmore: Do you think there are a number of people that might fall through the cracks as Mr. Johnson does in wanting to provide these services and helping out, who probably don't have a need for a full licensure that your organization would provide.

Francine Johnson: I honestly don't believe so. If you feel that that is a necessary industry that you want to be involved in, I believe that you should meet the same standards as the rest of the individuals that are out there providing that same service. We also have licensed several security providers and investigators out of state and they meet the same criteria and requirements. We do not have reciprocity with any other state. If they've been an investigator or security provider in Ohio or New York, or New Jersey, they still have to meet our standards and requirements, even if they have the former licensing in that state or even if they have the law enforcement background or security experience in that state. They still have to meet our requirements.

Rep. Hogan: I'm interested, how many private security providers and employees are there in ND.

Francine Johnson: The security providers, I believe, there are about 35 security agencies throughout the state of ND, as far as registered security officers, I would only be able to make a guess at that, I know that I have over 700 active employees in my database. That's all inclusive of investigators and security officers.

Rep. Hogan: I would be interested in the distribution, urban/rural, east/west. I can certainly see this being an issue in a small rural county, less likely in an urban area, is that correct.

Francine Johnson: Security agencies are required to register their employees with us. Where they have them stationed, we have no control over east vs. west, urban vs. rural.

Rep. Guggisberg: I am struggling with the liability insurance, so if this bill were to pass, a peace officer who is off duty, could do this work without having any insurance.

Francine Johnson: That's essentially what your bill would probably put forward, who is going to ensure the actions not only of that peace officer, that is off duty, who is doing that work; under our guidelines, obviously they have to meet that criteria. If they are out there on their own, if they're not working for a state, federal or local entity, which they can do if they have a contract with a city/state/federal police, if they have that agreement, they are covered. They are insured be it through their own fault or get injured on the job, someone is taking responsibility. What's being suggested in this bill would not take that into account. They would basically be out there on their own and who becomes responsible for them, either their actions or they themselves becoming injured or any number of liability aspects.

Rep. Guggisberg: That was my next question. If somebody did want to hire a security guard from the police department, they could contract that through the city, then.

Francine Johnson: Yes. Within our guidelines, there is that exemption. If they are under contract to a federal, state or local entity and they are paying the worker's compensation, all of those issues, and the city/county commissioners recognize that, they certainly can do that. They are exempt from our statute then.

Rep. Koppelman: As I read the bill, I'm wondering what your interpretation of the term inactive status is. Does that mean off-duty as we've been hearing some discussion or does that mean licensed but not being currently employed, whether it's being retired or just not working in the field.

Francine Johnson: I'm not sure what the intention or the definition is as they portrayed it as inactive. For our purposes, inactive under our terms, is that they no longer have police-type powers. They can still be members of the Peace Officers Association, they can be retired, and we will accept that as I'm no longer having those police-type powers, I've retired by BCI or Bismarck Police Dept., here are my credentials, but I'm still maintaining my association, and we're fine with that. The police-type powers is the key issue.

Rep. Koppelman: You're saying that if, in fact, that's what it means, that you're not actively working as a police officer and don't have police powers, that you wouldn't have a problem with these folks providing that service.

Francine Johnson: Provided he doesn't have any police-type authority. But if you are going back and forth, in and out of that industry, from the administrative standpoint, from my standpoint as far as regulating these individuals, I don't know how we would be able to maintain a record system, last week I was a police officer, and this week I'm not. Next week I'm going to be a police officer, etc. It would be an administrative nightmare under those kinds of terms.

Rep. Koppelman: I understand a licensing entity, or an industry trying to protect its own or maintain the status quo. I'm having trouble looking at it from a public safety perspective, trying to figure out what the disadvantage to the public is having someone who is a trained officer. If we're only talking about licensure here, if Mr. Johnson dropped his peace officer licensure, he's still the same individual with the same experience. His qualifications are no different, it's only the question that you're discussing this police power thing. I kind of think I understand, but I'm not sure that I do because I'm thinking back to a wedding we attended this past summer, and there was a dance and it happened to be someone from the sheriff's department was there policing that event. Now, you're saying that if the public is going to have trouble knowing if this person is wearing a badge and has police-type power, I think that confusion exists already. I think there are people who wear badges; it might be a security company badge and I think a lot of the general public isn't quite sure where that line is, are they a security officer especially at an event like that, or are they a policeman, are they off duty, are they moonlighting. How does this all work. I can't get my head around what the disadvantage would be to the public to have this person who has more training, more experience, and more qualifications arguably, than someone with less experience/qualifications and how they're injured by that.

Francine Johnson: From the standpoint of representing the industry, I've heard time and time again that that is an unfair advantage within the private sector as far as them meeting the standards and qualifications. Probably 9 out of 10 average citizens would say, yes I would prefer to have a law enforcement individual with the training vs. the entity unknown, I haven't seen this person carrying a badge or being involved in law enforcement. But the discretionary power of holding those dual roles, having that police-type power, I think is a disadvantage and could lead to exercising undue power and authority, just because they hold those two hats. We're trying to keep them segregated so that you know what you're getting.

Rep. Koppelman: It sounds like it's more of an issue of competition in the business, than it is an issue of public safety. I understand that. I just wanted that clarified.

Rep. Klemin: I guess I need a little clarification too. Did I understand you to say if the person who was licensed as a police officer is on inactive status as a police

officer, then that person can obtain a private investigator or security license, is that correct.

Francine Johnson: Yes, we don't use the term "inactive" in our statute. If I understand what they are referring to as "inactive", I think there is a difference. They're saying "inactive" as in not this week, I'm not a police officer or next month, I'm not a police officer. In our terms, "inactive" means you no longer are employed by, or have any police-type powers, then yes, you can make application and become a licensed private investigator or a licensed security provider.

Rep. Klemin: So maybe what we need to do in this, is to define "inactive" status.

Francine Johnson: Absolutely.

Rep. Klemin: If it had the meaning that you attributed to it, then you wouldn't have any problem with this bill, would you.

Francine Johnson: If it has the meaning that we are attributing to the term of "inactive", there is no need for the bill. We already license those individuals. It's already covered in statute and rule.

Rep. Klemin: Where is that at.

Francine Johnson: NDCC chapter 43-30-05 outlines what the license is to be required to provide private investigation or security service and then I also believe you've already been provided the prohibitions outlining that no individuals that have the full or part-time in any capacity wherein such an individual has any police-type powers or access to official law enforcement records. That's also in 93-02-01.1-07 and then it's also in the prohibitions under the security section. Our administrative rules are broken down into private investigator, administrative rules and security service regulations and rules.

Rep. Klemin: But a person can't be licensed as a part-time peace officer that would not be an inactive status under your thinking.

Francine Johnson: Repeat that please.

Rep. Klemin: A person who has a license as a part-time peace officer, would not be on inactive status as you are thinking.

Francine Johnson: Yes. If they are part-time, they still have police type powers and would not be inactive.

Rep. Klemin: I didn't see in chapter 12-63 anything about inactive status. Do you know if there a rule about "inactive" status under a peace officer chapter.



Francine Johnson: I do not. I don't have that chapter available to me at present.

Rep. Delmore: Are you aware of this problem with other people. I have a feeling that this may not be the first time you've come across somebody who, very unknowingly, tried to help out and do the right thing and then "bam" somebody it on them. Is the first time you've encountered this problem.

Francine Johnson: No. I get unlicensed activity all the time. That's my job. It's in the security, investigative business, it's out-of-state individuals that aren't familiar with rules and statutes. Essentially it's my job to put forward the letter saying, we understand you are doing these types of services, please be aware that under NDCC rule and statute you are in violation and please cease and desist, or become licensed under our statute.

Rep. Delmore: Have you ever thought about putting something in rules that helps to accommodate some of these people; especially when you're asking them to do something that goes against the grain because of the badge, etc.

Francine Johnson: With all due respect I think we cover that in rule and statute already, as far as what we're trying to accomplish. I'm former law enforcement myself, but going into the private sector, I think to maintain a professionalism on that side of it, for not only for law enforcement coming in, but we're trying to maintain a level of standard and maintain a bar for those that meet the requirement that, maybe you've been an insurance adjustor and have investigative experience and have taken the exam; we want the even playing field for all.

Chairman DeKrey: Thank you. Further testimony in opposition. We will close the hearing. Let's take a look at HB 1433.

Rep. Koppelman: I believe we received an email that was addressed to you and Rep. Klemin.

Chairman DeKrey: I didn't have a chance to look at it real close.

Rep. Koppelman: From someone who was here and heard the question about "inactive status", and according to his definition and I didn't bring it with me, but basically I think inactive status means you're retired or no longer a peace officer, no longer working in the field but you still have your license, which is exactly the case that the gentleman here is in. It doesn't apply to moonlighting, which is what they were telling it might. If you're an active police officer, inactive status doesn't mean you moonlight. Inactive status means that you're retired or moved on to another field but you still keep your license.

Rep. Klemin: I have the email here, in Administrative Rule, apparently from the peace officer standards and training board and defines inactive status. A person who does not perform duties as a peace officer or is no longer employed by an

agency, may request that the person's license be placed on inactive status. The person's license may remain on inactive status indefinitely if the person maintains continuing education requirements, and renews the license in accordance with board requirements. As I understand this, you still have to be going to continuing education while you are on inactive status. So that is the definition of inactive status at the peace officer's standards and training board.

Chairman DeKrey: Post board.

Rep. Guggisberg: The question I still have is who is insuring this person.

Chairman DeKrey: I think what they are asking, is that they want another category of inactive, not called inactive, but basically private security and investigator firms are telling us that you can't be both. You can't be a cop and private security at the same time. The gentleman this morning still wanted to remain as a cop, he is picking up part-time work with law enforcement out there because he is a reserve police officer. The lady was saying he had to choose. He's either going to be private security or he's going to be police. You can't just take the policeman badge off and then be a security guard. I don't know how much of that is turf protection and how much is valid. I think Rep. Guggisberg makes a valid point; somebody has to have some authority over this guy. He's got to be insured or whatever.

Rep. Maragos: It seems to me that the gentleman could do what he wants to do if he paid the fee and took the test and set up his own company and had the insurance, he could do both.

Rep. Koppelman: I signed onto the bill because it seems like a reasonable thing to do. My understanding is that he would like to do that, he is willing to pay the fee, get licensed, carry liability insurance, etc. but as a matter of pride and having the credentials as a peace officer, he doesn't want to give up that designation. That's why to me it does sound like turf protection because I think what we heard this morning, the opposition seemed to center on the idea that this is confusing to the public because they don't know if it is a real cop or not. That doesn't hold a lot of water with me, because I think if you're at a function and you see someone there with a badge, I mean you might say is that a cop or a rent-a-cop, or you might not know, but it doesn't matter. If you're doing something inappropriate, that person is going to stop you and if they have to call an on-duty uniformed officer to arrest you, they'll do it. If they can arrest you themselves, they'll do that. I don't quite understand the difference other than turf protection.

Rep. Klemin: I've got a problem with the mechanics of this bill; that is, we're putting a new section into the private investigator chapter, which is saying that they may issue a license to a peace officer under chapter 12-63 another chapter as long as that person is on inactive status, which is defined in a rule under that other chapter. Functionally, I'm not sure that I like putting in one chapter that you can do something under a rule adopted under another chapter.

Rep. Koppelman: That's a good point, I think it could be cleared up with an amendment, Rep. Klemin, if you think it would belong somewhere else and we could put the definition of inactive status in the bill if you wanted to do that. It is kind of a clumsy way to do it.

Rep. Klemin: It would certainly clarify the question you had earlier. Is he off this week and on next week.

Rep. Maragos: I have one question, if he was licensed would that same rule still be operative about being active or inactive.

Rep. Klemin: Not unless he gives up his police badge.

Rep. Maragos: Oh, that's a requirement.

Rep. Delmore: It seems to me in talking to him, that he's willing to pay the fees, but he can't get clarification on the other parts with keeping his badge. I think we should try and find a place where this might go and help him. If it ends up it's turf protection, fine if it ends up we can't do anything. Right now it's not working for him, and I think he deserves a chance.

Chairman DeKrey: I will appoint a subcommittee of Rep. Brabandt as chair; Rep. Koppelman and Rep. Guggisberg.

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1433  
February 7, 2011  
14135

☐ Conference Committee

Committee Clerk Signature



## Minutes:

Chairman DeKrey: We will take a look at HB 1433.

Rep. Brabandt: I reviewed this bill with Jennifer Clark and she proposed the amendments that I passed out. It is pretty self-explanatory.

Rep. Koppelman: The intent of the amendment, in visiting with Miss Clark is to do what I think the intent of the bill was to do; which is to say that these folks who are off-duty wanting to do security work. The gentleman who testified is retired, but doesn't want to give up his badge. He wants to keep his designation as a law enforcement officer for understandable reasons. The question was could that individual provide this kind of security service. The indication we had received since the hearing was, that this individual or anyone that would be affected by the bill, could do so, that he is perfectly willing to buy the liability insurance and pay the licensing fees. This change as I see it, would say that kind of person can be licensed, they aren't active duty police or law enforcement, but that they are on inactive status, and apparently that is a term that's used in the Code or Rule, I don't know which. It's clear that if we pass it this way, that kind of individual could do what they want to do, but the PI's should be happy with the idea that no one who's active duty could be licensed.

Rep. Maragos: I move the Rep. Brabandt amendment.

Rep. Koppelman: Second the motion.

Rep. Steiner: I did call the Billings County Sheriff office and asked about this situation, and he told me that the gentleman who testified is employed part-time occasionally at the Stark County Law Enforcement. So he does work part-time for law enforcement. I don't know exactly how this all works, but my understanding was, did he want to put his badge on the shelf for a weekend, and then he gets the badge back on Monday.

Rep. Koppelman: That's news to me. Rep. Meyer told us that he didn't work in any law enforcement capacity. I'm not going to try and mediate that question. As the bill is written, my understanding of it is, if he does that, he would not qualify even under our amendment. I think if that's the case, he is going to have to make a choice. Either he's retired or not, he's inactive or not, if he's active, he can't; if he's inactive he can, if this passes.

Rep. Onstad: So basically the amendments are stating that if he did retire, as long as he has continuing education and renews the license, he can still maintain his inactive status, so five years from now, as long as he's retained all that, he could say that he wanted to look for employment in the same type of employment.

Rep. Koppelman: As I read it, that's true, and he would still be licensed so he could go back to law enforcement, but then I think he'd have to give up the PI or security license. You have to make a choice. But you can keep that official badge and official status as long as you're not actively working.

Rep. Kretschmar: On the original bill, do lines 4 through 8 stay in. In the amendment, they aren't taken out.

Rep. Klemin: Wouldn't that be section 2.

Rep. Koppelman: I believe that's true, that's the intent, that the Board may issue a license to that individual, this just clarifies what inactive status means and that they can retain that status. Both sections would be.

Rep. Hogan: He did report that he was on the reserves, and that's not paid status, so that might be how he's working with the sheriff's office. It doesn't talk about the reserve issue.

Chairman DeKrey: We will take a voice vote on the Brabandt amendment. Motion carried. We now have the bill before us as amended. What are the committee's wishes in regard to HB 1433?

Rep. Delmore: I move a Do Pass as amended.

Rep. Koppelman: Second the motion.

**14 YES 0 NO 0 ABSENT**

**DO PASS AS AMENDED**

**CARRIER: Rep. Brabandt**

VRL  
2/7/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1433

Page 1, line 2, after "services" insert "; and to amend and reenact section 12-63-11 of the North Dakota Century Code, relating to licensure of peace officers"

Page 1, after line 3, insert:

**"SECTION 1. AMENDMENT.** Section 12-63-11 of the North Dakota Century Code is amended and reenacted as follows:

**12-63-11. Renewal of license.**

1. A license expires three years from the date of its issuance and must be renewed in the manner prescribed by the board and on payment of a renewal fee and on a show of proof that the individual has met the requirements established by the board for continuing education. The board may provide for the late renewal of a license on payment of a late fee, but a late renewal of a license may not be granted more than one year after expiration of the license.
2. On request, the board shall grant inactive status to a licensee who does not perform the duties of a peace officer or is no longer employed by a criminal justice agency. A licensee may retain inactive status indefinitely if the licensee maintains continuing education requirements and renews the license in accordance with board requirements."

Renumber accordingly

Date: 2/7/11  
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 7433

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11.0697.01001 02000

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment  
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Delmore Seconded By Rep. Koppelman

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------|-----|----|-----------------|-----|----|
| Ch. DeKrey      | ✓   |    | Rep. Delmore    | ✓   |    |
| Rep. Klemin     | ✓   |    | Rep. Guggisberg | ✓   |    |
| Rep. Beadle     | ✓   |    | Rep. Hogan      | ✓   |    |
| Rep. Boehning   | ✓   |    | Rep. Onstad     | ✓   |    |
| Rep. Brabandt   | ✓   |    |                 |     |    |
| Rep. Kingsbury  | ✓   |    |                 |     |    |
| Rep. Koppelman  | ✓   |    |                 |     |    |
| Rep. Kretschmar | ✓   |    |                 |     |    |
| Rep. Maragos    | ✓   |    |                 |     |    |
| Rep. Steiner    | ✓   |    |                 |     |    |
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Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Brabandt

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1433: Judiciary Committee (Rep. DeKrey, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1433 was placed on the Sixth order on the calendar.

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Page 1, after line 3, insert:

**"SECTION 1. AMENDMENT.** Section 12-63-11 of the North Dakota Century Code is amended and reenacted as follows:

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2. On request, the board shall grant inactive status to a licensee who does not perform the duties of a peace officer or is no longer employed by a criminal justice agency. A licensee may retain inactive status indefinitely if the licensee maintains continuing education requirements and renews the license in accordance with board requirements."

Renumber accordingly



2011 SENATE JUDICIARY

HB 1433

# 2011 SENATE STANDING COMMITTEE MINUTES

**Senate Judiciary Committee**  
Fort Lincoln Room, State Capitol

HB1433  
3/9/11  
Job #15189

☐ Conference Committee

Committee Clerk Signature



## **Explanation or reason for introduction of bill/resolution:**

Relating to regulation of investigative & security services

## **Minutes:**

There is attached testimony

## **Senator Nething – Chairman**

**Senator Lyson** – Provides testimony for Rep. S. Meyer – See written testimony.

**Francine Johnson** – Executive Director of the ND Private Investigation and Security Board.  
See written testimony.

**Senator Lyson** – Asks her to clarify inactive.

**Johnson** – Says it is their interpretation that inactive means that they are not currently involved in law enforcement and have no law enforcement authority, they are retired or not employed by any law enforcement agency.

**Bill Butcher** – Chairman of the ND private Investigator & Security Board – In agreement with this bill.

**Senator Nelson** – Asks if Section One the definition of inactive has been expanded.

**Johnson** – Responds she believes that is the peace officer standard not her board standard. She said her board would comply with the definition.

**Larry Johnson** – Belfield, ND – see written testimony.

Opposition – 0

Close the hearing on 1433

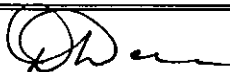
# 2011 SENATE STANDING COMMITTEE MINUTES

**Senate Judiciary Committee**  
Fort Lincoln Room, State Capitol

HB1433  
3/22/11  
Job #15836

☐ Conference Committee

Committee Clerk Signature



## **Explanation or reason for introduction of bill/resolution:**

Relating to regulation of investigative & security services.

**Minutes:**

**Senator Nething – Chairman**

### **Committee work**

Committee discusses an amendment that was brought in and decides to ask Legislative Council where the amendment should be added.

Committee delays action until that is finished

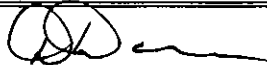
# 2011 SENATE STANDING COMMITTEE MINUTES

**Senate Judiciary Committee**  
Fort Lincoln Room, State Capitol

HB1433  
3/30/11  
Job #16193

☐ Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to regulation of investigative & security services.

Minutes:

**Senator Nething – Chairman**

### Committee work

Committee discusses putting on the amendment.

**Senator Olafson** moves to adopt the amendment

**Senator Lyson** seconded

Verbal vote – all yes

**Senator Olafson** moves do pass as amended

**Senator Sitte** seconded

Roll call vote – 6 yes, 0 no

Motion passes

**Senator Sitte** will carry

**PROPOSED AMENDMENT TO ENGROSSED HB 1433**

Page 1, line 19, after "requirements." insert "A licensee on inactive status shall meet the same qualifications, testing, and insurance requirements as are required by law and rule for a licensee on active status."

Date: 3/30/11  
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1433

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment  
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Olafson Seconded By Senator Lyson

| Senators                     | Yes | No | Senators       | Yes | No |
|------------------------------|-----|----|----------------|-----|----|
| Dave Nething - Chairman      |     |    | Carolyn Nelson |     |    |
| Curtis Olafson - V. Chairman |     |    |                |     |    |
| Stanley Lyson                |     |    |                |     |    |
| Margaret Sitte               |     |    |                |     |    |
| Ronald Sorvaag               |     |    |                |     |    |
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Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment Senator

If the vote is on an amendment, briefly indicate intent:

Verbal yes

Date: 3/30/11  
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1433

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment  
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Olafson Seconded By Senator Sitte

| Senators                     | Yes | No | Senators       | Yes | No |
|------------------------------|-----|----|----------------|-----|----|
| Dave Nething - Chairman      | X   |    | Carolyn Nelson | X   |    |
| Curtis Olafson - V. Chairman | X   |    |                |     |    |
| Stanley Lyson                | X   |    |                |     |    |
| Margaret Sitte               | X   |    |                |     |    |
| Ronald Sorvaag               | X   |    |                |     |    |
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Total (Yes) 6 No 0

Absent \_\_\_\_\_

Floor Assignment Senator Sitte

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1433, as engrossed: Judiciary Committee (Sen. Nething, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1433 was placed on the Sixth order on the calendar.

Page 1, line 19, after the period insert "A licensee on inactive status shall meet the same qualifications, testing, and insurance requirements as are required by law and rule for a licensee on active status."

Renumber accordingly



2011 HOUSE JUDICIARY

CONFERENCE COMMITTEE

HB 1433

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1433  
April 11, 2011  
16470

☒ Conference Committee

Committee Clerk Signature



## Minutes:

Ch Boehning: We will open the Conference Committee on HB 1433. Let's start with the Senate explaining their amendments.

Sen. Lyson: Explained how the inactive law enforcement officers wanted to keep their licenses, and that they would need to do the testing, have insurance and follow the rules.

Rep. Boehning: Is this for private investigators.

Sen. Lyson: Said that this was primarily to be used by law enforcement officers; they would need to keep everything going.

Sen. Sitte: What about Butcher Investigations, they came in during the Committee Hearing.

Sen. Lyson: Since Butcher is a private investigator, it has nothing to do with this particular bill. This is for inactive law enforcement officers wanting to keep their licenses and that they would need to follow all the rules.

Rep. Boehning: Any other questions.

Rep. Onstad: The intent of the Senate amendments to the Bill further clarified what was going on. I move that the House accede to the Senate amendments.

Sen. Lyson: Seconded the motion.

**5 YES 0 NO 1 ABSENT**

**HOUSE ACCEDED TO SENATE AMENDMENTS**

# 2011 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: JUDICIARY

Bill/Resolution No. 1433 as (re) engrossed

Date: 4/11/11

Roll Call Vote #: 1

## Action Taken

- ☒ HOUSE accede to Senate amendments  
☐ HOUSE accede to Senate amendments and further amend  
☐ SENATE recede from Senate amendments  
☐ SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) 1301

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) 1433 was placed on the Seventh order of business on the calendar

Motion Made by: Rep. Onstad Seconded by: Sen. Lyson

| Representatives |  |  |  | Yes | No |  | Senators    |  |  |  | Yes | No |
|-----------------|--|--|--|-----|----|--|-------------|--|--|--|-----|----|
| Rep. Boehning   |  |  |  | ✓   |    |  | Sen. Lyson  |  |  |  | ✓   |    |
| Rep. Braubandt  |  |  |  | ✓   |    |  | Sen. Petter |  |  |  | ✓   |    |
| Rep. Onstad     |  |  |  | ✓   |    |  | Sen. Nelson |  |  |  |     |    |
|                 |  |  |  |     |    |  |             |  |  |  |     |    |

Vote Count Yes: 5 No: 0 Absent: 1

House Carrier Rep. Boehning Senate Carrier Sen. Lyson

LC Number \_\_\_\_\_ of amendment

LC Number \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

**REPORT OF CONFERENCE COMMITTEE**

**HB 1433, as engrossed:** Your conference committee (Sens. Lyson, Sitte, Nelson and Reps. Boehning, Brabandt, Onstad) recommends that the **HOUSE ACCEDE** to the Senate amendments as printed on HJ page 1301 and place HB 1433 on the Seventh order.

Engrossed HB 1433 was placed on the Seventh order of business on the calendar.

2011 TESTIMONY

HB 1433

HOUSE JUDICIARY COMMITTEE

DUANE DEKREY CHAIRMAN

Mr. Chairman and House Judiciary members, for the record my name is Shirley Meyer and I represent District 36.

HB 1433 is before you today, because of a concern raised by a constituent when he tried to start a private security service company to handle the increasing demands of trying to provide security services for week-end wedding dances and/or other types of activities that require security.

As a retired law enforcement official he was surprised to discover that unless he was willing to turn over all of his credentials and badge he was prohibited by law by not only owning and operating a security company, but being hired as a week-end security person.

I'm told retired law enforcement officials (and all law enforcement officials for that matter) take a great deal of pride in their badge, credentials, and the distinction of having completed the training necessary to wear the badge.

HB 1433 creates a new section of code in chapter 43-30 that will allow the board to issue a license to an individual as long as he is on inactive status.

Hopefully, this will allow more peace officers to start more private security companies and also allow more peace officers to be hired for week-end security duties.

I've included in my testimony copies of the Century Code addressing this issue and also the administrative rule 93-02-01.1 covering the prohibitions.

2. Has completed the same requirements for firearms training as is required for North Dakota peace officers. However, if the individual fails the written examination or shooting course twice, the individual must wait at least thirty days to retake the failed portion, and if the individual fails the written examination or shooting course a third time, the individual must wait a full year before retaking the written examination or shooting course; and
3. Has provided at least one thousand hours of private investigative or private security services

**History:** Effective May 1, 2000

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-04

**93-02-01.1-06. Equivalency.** The board may waive part of or all of any training or experience requirements for individuals licensed or registered by the board based upon equivalent training or experience in any combination of the following: private security or private investigation in another state with equal or similar requirements; law enforcement in any jurisdiction with equal or similar requirements; military investigation; proprietary investigation, provided that equal or similar requirements for training as required by this chapter were met; or equivalent training in any educational institution in relevant subject matters.

**History:** Effective May 1, 2000

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-04

**93-02-01.1-07. Prohibitions.**

1. No individual, while providing private investigative services, may:
  - a. Wear, carry, use, display, or possess any identification, badge, uniform, patch, insignia, sign, decal, or other form of identification;
  - b. Make or utter any statement; or
  - c. Use, control, possess, or own any motor vehicle of any kind which is marked or identified by any sign, insignia, decal, equipment, device, or contrivance which could or might reasonably lead the general public to believe or assume that the individual has any police-type powers or that the individual or vehicle is associated in any way with a governmental law enforcement agency or other governmental agency. Examples of prohibited conduct include use of the word "police", the great seal of the state of North Dakota or the seal of any political subdivision; or use of any type of common or customary military rank.
2. No individual licensed or registered by the board under this chapter, including the holder of an agency license, may be employed full time or part time in any capacity wherein such individual has any police-type powers or access to any official law enforcement records.
3. No individual licensed or registered by the board under this chapter may solicit or accept any commission or deputization that in any way involves the authority to use or employ, or the use or employment of,

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any police-type powers, except that of a special deputy sheriff or special police officer, and then, only in the case of an emergency or disaster and only for the immediate time of the emergency or disaster.

4. As used in this section, positions with police-type powers do not include official volunteer civil defense positions or membership in the national guard, reserve, or regular armed forces of the United States, but include positions or membership in the military police, security police, or similar police functions of the regular armed forces of the United States.
5. Expert witnesses, including law enforcement officials, are exempt from being licensed or registered to provide private investigative services when used to review or research information that has been gathered or a field review of the scene is conducted, so long as there is no personal contact, such as interviewing witnesses, suspects, victims, or the use of confidential law enforcement information or records.

**History:** Effective May 1, 2000

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 12.1-13-04

**93-02-01.1-08. Surety requirements.**

1. Before a license to provide private investigative services can be issued to any individual or agency, the applicant must file with the board a certificate of insurance executed by the applicant and by an insurance company in the sum of three hundred thousand dollars of general liability with errors and omissions insurance.
2. The certificate of insurance must be conditioned on the faithful and honest conduct of the business of the applicant and the applicant's agents, employees, and independent contractors, and for the full protection of any person who deals with the applicant or the applicant's agents, employees and independent contractors. The certificate of insurance must provide that any person injured by the breach of the conditions of the insurance policy may bring an action on that insurance policy in the name of the state of North Dakota for the use of the person so injured to recover legal damages suffered by reason of breach of the conditions; provided, however, that the aggregate liability of the insurance policy, for all damages may, in no event, exceed the sum of the insurance policy. The insurance underwriter may cancel the bond or policy upon giving thirty days' notice in writing to the board and thereafter is relieved of liability for any breach of condition occurring after the effective date of the cancellation.

**History:** Effective May 1, 2000

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-04

**93-02-01.1-09. License - Posting.** Each individual or agency which is licensed by the board shall conspicuously display that license at all times in the licensee's place of business. If the licensee has more than one office as a

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**CHAPTER 12.1-13**  
**CONFIDENTIAL INFORMATION - CONFLICT OF INTEREST - IMPERSONATION**

**12.1-13-01. Disclosure of confidential information provided to government.** A person is guilty of a class C felony if, in knowing violation of a statutory duty imposed on him as a public servant, he discloses any confidential information which he has acquired as a public servant. "Confidential information" means information made available to the government under a governmental assurance of confidence as provided by statute.

**12.1-13-02. Speculating or wagering on official action or information.**

1. A person is guilty of a class A misdemeanor if during employment as a public servant, or within one year thereafter, in contemplation of official action by himself as a public servant or by a government agency with which he is or has been associated as a public servant, or in reliance on information to which he has or had access only in his capacity as a public servant, he:
  - a. Acquires a pecuniary interest in any property, transaction, or enterprise which may be affected by such information or official action;
  - b. Speculates or wagers on the basis of such information or official action; or
  - c. Aids another to do any of the foregoing.
2. A person is guilty of a class A misdemeanor if as a public servant he takes official action which is likely to benefit him as a result of an acquisition of a pecuniary interest in any property, transaction, or enterprise, or of a speculation or wager, which he made, or caused or aided another to make, in contemplation of such official action.

**12.1-13-03. Public servant's interest in public contracts.**

1. Every public servant authorized to sell or lease any property, or to make any contract in his official capacity, alone or in conjunction with other public servants, who voluntarily becomes interested individually in the sale, lease, or contract, directly or indirectly, is guilty of a class A misdemeanor.
2. Subsection 1 shall not apply to:
  - a. Contracts of purchase or employment between a political subdivision and an officer of that subdivision, if the contracts are first unanimously approved by the other members at a meeting of the governing body of the political subdivision, and a unanimous finding is entered in the official minutes of that body that the contract is necessary because the services or property contracted for are not otherwise obtainable at equal cost.
  - b. Sales, leases, or contracts entered into between school boards and school board members or school officers.

**12.1-13-04. Impersonating officials.**

1. A person is guilty of an offense if he falsely pretends to be:
  - a. A public servant, other than a law enforcement officer, and acts as if to exercise the authority of such public servant.
  - b. A public servant or a former public servant and thereby obtains a thing of value.

- c. A law enforcement officer.
2. It is no defense to prosecution under this section that the pretended capacity did not exist or the pretended authority could not legally or otherwise have been exercised or conferred.
3. An offense under subdivision b or c of subsection 1 is a class A misdemeanor. An offense under subdivision a of subsection 1 is a class B misdemeanor.

## 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. "License" includes a registration issued by the board.
4. "Licensee" includes an individual who is registered by the board.
5. "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.
6. "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,

2. Has completed the same requirements for firearms training as is required for North Dakota peace officers. However, if the individual fails the written examination or shooting course twice, the individual must wait at least thirty days to retake the failed portion, and if the individual fails the written examination or shooting course a third time, the individual must wait a full year before retaking the written examination or shooting course; and
3. Has provided at least one thousand hours of private investigative or private security services

**History:** Effective May 1, 2000

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-04

**93-02-01.1-06. Equivalency.** The board may waive part of or all of any training or experience requirements for individuals licensed or registered by the board based upon equivalent training or experience in any combination of the following: private security or private investigation in another state with equal or similar requirements; law enforcement in any jurisdiction with equal or similar requirements; military investigation; proprietary investigation, provided that equal or similar requirements for training as required by this chapter were met; or equivalent training in any educational institution in relevant subject matters.

**History:** Effective May 1, 2000

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-04

**93-02-01.1-07. Prohibitions.**

1. No individual, while providing private investigative services, may:
  - a. Wear, carry, use, display, or possess any identification, badge, uniform, patch, insignia, sign, decal, or other form of identification;
  - b. Make or utter any statement; or
  - c. Use, control, possess, or own any motor vehicle of any kind which is marked or identified by any sign, insignia, decal, equipment, device, or contrivance which could or might reasonably lead the general public to believe or assume that the individual has any police-type powers or that the individual or vehicle is associated in any way with a governmental law enforcement agency or other governmental agency. Examples of prohibited conduct include use of the word "police", the great seal of the state of North Dakota or the seal of any political subdivision; or use of any type of common or customary military rank.
2. No individual licensed or registered by the board under this chapter, including the holder of an agency license, may be employed full time or part time in any capacity wherein such individual has any police-type powers or access to any official law enforcement records.
3. No individual licensed or registered by the board under this chapter may solicit or accept any commission or deputization that in any way involves the authority to use or employ, or the use or employment of,

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any police-type powers, except that of a special deputy sheriff or special police officer, and then, only in the case of an emergency or disaster and only for the immediate time of the emergency or disaster.

4. As used in this section, positions with police-type powers do not include official volunteer civil defense positions or membership in the national guard, reserve, or regular armed forces of the United States, but include positions or membership in the military police, security police, or similar police functions of the regular armed forces of the United States.
5. Expert witnesses, including law enforcement officials, are exempt from being licensed or registered to provide private investigative services when used to review or research information that has been gathered or a field review of the scene is conducted, so long as there is no personal contact, such as interviewing witnesses, suspects, victims, or the use of confidential law enforcement information or records.

**History:** Effective May 1, 2000

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 12.1-13-04

**93-02-01.1-08. Surety requirements.**

1. Before a license to provide private investigative services can be issued to any individual or agency, the applicant must file with the board a certificate of insurance executed by the applicant and by an insurance company in the sum of three hundred thousand dollars of general liability with errors and omissions insurance.
2. The certificate of insurance must be conditioned on the faithful and honest conduct of the business of the applicant and the applicant's agents, employees, and independent contractors, and for the full protection of any person who deals with the applicant or the applicant's agents, employees and independent contractors. The certificate of insurance must provide that any person injured by the breach of the conditions of the insurance policy may bring an action on that insurance policy in the name of the state of North Dakota for the use of the person so injured to recover legal damages suffered by reason of breach of the conditions; provided, however, that the aggregate liability of the insurance policy, for all damages may, in no event, exceed the sum of the insurance policy. The insurance underwriter may cancel the bond or policy upon giving thirty days' notice in writing to the board and thereafter is relieved of liability for any breach of condition occurring after the effective date of the cancellation.

**History:** Effective May 1, 2000

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-04

**93-02-01.1-09. License - Posting.** Each individual or agency which is licensed by the board shall conspicuously display that license at all times in the licensee's place of business. If the licensee has more than one office as a

## **CHAPTER 12.1-13**

### **CONFIDENTIAL INFORMATION - CONFLICT OF INTEREST - IMPERSONATION**

**12.1-13-01. Disclosure of confidential information provided to government.** A person is guilty of a class C felony if, in knowing violation of a statutory duty imposed on him as a public servant, he discloses any confidential information which he has acquired as a public servant. "Confidential information" means information made available to the government under a governmental assurance of confidence as provided by statute.

**12.1-13-02. Speculating or wagering on official action or information.**

1. A person is guilty of a class A misdemeanor if during employment as a public servant, or within one year thereafter, in contemplation of official action by himself as a public servant or by a government agency with which he is or has been associated as a public servant, or in reliance on information to which he has or had access only in his capacity as a public servant, he:
  - a. Acquires a pecuniary interest in any property, transaction, or enterprise which may be affected by such information or official action;
  - b. Speculates or wagers on the basis of such information or official action; or
  - c. Aids another to do any of the foregoing.
2. A person is guilty of a class A misdemeanor if as a public servant he takes official action which is likely to benefit him as a result of an acquisition of a pecuniary interest in any property, transaction, or enterprise, or of a speculation or wager, which he made, or caused or aided another to make, in contemplation of such official action.

**12.1-13-03. Public servant's interest in public contracts.**

1. Every public servant authorized to sell or lease any property, or to make any contract in his official capacity, alone or in conjunction with other public servants, who voluntarily becomes interested individually in the sale, lease, or contract, directly or indirectly, is guilty of a class A misdemeanor.
2. Subsection 1 shall not apply to:
  - a. Contracts of purchase or employment between a political subdivision and an officer of that subdivision, if the contracts are first unanimously approved by the other members at a meeting of the governing body of the political subdivision, and a unanimous finding is entered in the official minutes of that body that the contract is necessary because the services or property contracted for are not otherwise obtainable at equal cost.
  - b. Sales, leases, or contracts entered into between school boards and school board members or school officers.

**12.1-13-04. Impersonating officials.**

1. A person is guilty of an offense if he falsely pretends to be:
  - a. A public servant, other than a law enforcement officer, and acts as if to exercise the authority of such public servant.
  - b. A public servant or a former public servant and thereby obtains a thing of value.



c. A law enforcement officer.

2. It is no defense to prosecution under this section that the pretended capacity did not exist or the pretended authority could not legally or otherwise have been exercised or conferred.
3. An offense under subdivision b or c of subsection 1 is a class A misdemeanor. An offense under subdivision a of subsection 1 is a class B misdemeanor.

## 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. "License" includes a registration issued by the board.
4. "Licensee" includes an individual who is registered by the board.
5. "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.
6. "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,

## SENATE JUDICIARY COMMITTEE

DAVE NETHING, CHAIRMAN

Mr. Chairman and Senate Judiciary members, for the record my name is Shirley Meyer and I represent District 36.


HB 1433 is before you today, because of a concern raised by a constituent when he tried to start a private security service company to handle the increasing demands of trying to provide security services for week-end wedding dances and/or other types of activities that require security.

As a retired law enforcement official he was surprised to discover that unless he was willing to turn over all of his credentials and badge he was prohibited by law by not only owning and operating a security company, but being hired as a week-end security person.

I'm told retired law enforcement officials (and all law enforcement officials for that matter) take a great deal of pride in their badge, credentials, and the distinction of having completed the training necessary to wear the badge.

HB 1433 creates a new section of code in chapter 43-30 that will allow the board to issue a license to an individual as long as he is on inactive status.

Hopefully, this will allow more peace officers to start more private security companies and also allow more peace officers to be hired for week-end security duties.



I've included in my testimony copies of the Century Code addressing this issue and also the administrative rule 93-02-01.1-07 covering the prohibitions.



## **CHAPTER 12-63**

### **PEACE OFFICER STANDARDS, TRAINING, AND LICENSING**

**12-63-01. Definitions.** As used in this chapter:

1. "Board" means the peace officer standards and training board.
2. "Part-time peace officer license" means a license issued to an individual authorized by law or appointed by a criminal justice agency of this state on a salaried or nonsalaried basis to enforce the law and to conduct or engage in investigations of violations of the law for no more than an average of twenty hours per week, not including time spent on call when no call to active duty is received, calculated on an annual basis.
3. "Peace officer" means a public servant authorized by law or by government agency or branch to enforce the law and to conduct or engage in investigations of violations of the law.

**12-63-01.1. Peace officer standards and training board - Membership - Duties.** The peace officer standards and training board consists of nine members including the director of the law enforcement training center, six peace officers, one county government representative, and one city government representative. With the exception of the director of the law enforcement training center, all members must be appointed by the attorney general and serve staggered two-year terms. With the exception of the county government representative, the city government representative, and the director of the law enforcement training center, a member may not serve more than three consecutive terms. The attorney general shall also appoint the chairman of the board. The office of attorney general shall provide support staff to the board, including an employee to serve as the secretary of the board and as an ex officio nonvoting member of the board.

**12-63-02. License required.** An individual may not perform peace officer law enforcement duties in this state unless the individual is licensed as required in this chapter.

**12-63-02.1. Part-time peace officer license.**

1. Except as provided in this section, all provisions of this chapter apply to part-time peace officer licenses. Except as limited by this section, a part-time licensed peace officer of this state has the authority of a licensed peace officer of this state.
2. The board shall issue a part-time license to any individual appointed by a criminal justice agency who meets the requirements of this chapter and the rules of the board for a part-time peace officer license.
3. A criminal justice agency may appoint part-time licensed peace officers to supplement and assist licensed peace officers. A criminal justice agency may not appoint a part-time licensed peace officer unless the part-time licensed peace officer acts under the direct or indirect supervision of a licensed peace officer designated by the criminal justice agency.
4. A part-time licensed peace officer may not exercise peace officer duties, including the exercise of arrest authority, when off duty.
5. Unless the part-time licensed peace officer has a valid North Dakota concealed weapons license, a part-time licensed peace officer may not carry a duty weapon or concealed weapon when off duty.

6. The board shall establish criteria for part-time licenses, including training curriculum, examination requirements, weapon training and certification, licensing requirements, and continuing education requirements.
7. The board shall adopt rules to implement part-time peace officer licenses and shall establish by rule fees for application for examination, initial licensing, renewal and late renewal, and reinstatement of part-time peace officer licenses.

**12-63-02.2. Tribal police officers.**

1. A tribal police officer of a federally recognized Indian tribe in this state who meets the requirements of this chapter and the rules adopted by the board is eligible for a peace officer license or part-time peace officer license.
2. The board shall issue a peace officer license or part-time peace officer license to a tribal police officer who is eligible for a peace officer license or part-time peace officer license under this section and who has paid the prescribed license fee if:
  - a. The tribal police officer has been appointed as a special deputy in accordance with section 11-15-02;
  - b. The tribal police officer is employed by the state or a political subdivision; or
  - c. There is an agreement between the state or a political subdivision and the tribe for tribal police officers to perform law enforcement services.
3. A tribal police officer who is a member of a police force of a tribal government and who is licensed under this section may exercise the powers of a peace officer of this state within the exterior boundaries of the reservation, or off the reservation, in accordance with the terms and conditions of the special deputy appointment, the employment agreement, or the agreement between the state or political subdivision and the tribe.
4. A tribal police officer who has a peace officer license under this section is subject to this chapter and the rules adopted by the board, including requirements for license renewal or reinstatement, annual sidearm qualification, and continuing education.
5. The state or political subdivision is not liable for any act or omission of a tribal police officer exercising peace officer powers authorized by an agreement between the state or a political subdivision and a tribe.
6. This section does not diminish or expand the jurisdiction of any tribe or the state.

**12-63-03. Persons and practices not affected.** This chapter does not prevent or restrict the practice of peace officer duties or activities of:

1. Auxiliary personnel such as members of organized groups for purposes such as posse, search and rescue, and security at dances, if the group operates as adjunct to the police or sheriff's department, and does not have arrest powers or peace officer authority delegated to its members by the department.
2. A reserve officer such as an individual used by a municipal, county, or state law enforcement agency to provide services to that jurisdiction on a nonsalaried basis and who is granted full arrest authority.
3. A person who provides private investigative services in this state.
4. A person doing private security work or any private security agency.

5. A person performing peace officer duties in an official capacity as a federal officer.

**12-63-04. Board - Powers - Duties - Authority.** The board shall administer, coordinate, and enforce the provisions of this chapter, evaluate the qualifications of applicants, and approve the examinations for licensing under this chapter.

1. The board shall:
  - a. Prescribe the criteria for certification of basic, advanced, and specialized peace officer training curriculum, instructors, and schools;
  - b. Certify curriculum, instructors, schools, and officers that have met the training certification criteria;
  - c. Establish the curriculum for basic and advanced peace officer training; and
  - d. Prescribe minimum standards of sidearm training and certification for peace officers before they may carry a sidearm.
2. The board shall keep records and minutes necessary to carry out its functions. The board may:
  - a. Issue subpoenas, examine witnesses, administer oaths, and investigate allegations of practices violating the provisions of this chapter or rules adopted by the board.
  - b. Examine, under oath, any applicant for licensing.
  - c. Examine, under oath, any licensed peace officer during a hearing to suspend, revoke, or to not renew a license of a peace officer.
  - d. Adopt rules relating to the professional conduct of peace officers and to implement the requirements of this chapter, including rules relating to professional licensure, continuing education, and ethical standards of practice, for persons holding a license to practice peace officer duties.

**12-63-05. Fees.** The board shall prescribe by rule the fee for application for examination, for an initial license, for renewal of a license, and for late renewal of a license. The board shall administer fees received under this chapter in accordance with section 54-44-12.

**12-63-06. Application for license.** An applicant for a license as a peace officer shall file a written application provided by the board showing to the satisfaction of the board that the applicant:

1. Is of good moral character.
2. Possesses a high school diploma or general education equivalency certificate.
3. Has had a complete background investigation conducted by the parent agency or the division.
4. Has passed a medical and psychological examination approved or prescribed by the board.
5. Has successfully completed a training program recognized by the board.
6. Has passed an examination as provided in section 12-63-07 or has arranged to take such an examination and is eligible for a limited license under section 12-63-09.



7. Has complied with rules of the board.

#### **12-63-07. Examination for license.**

1. Only a person satisfying the requirements of subsections 1 through 5 of section 12-63-06 may apply for examination. The application must be filed in the manner the board prescribes and be accompanied by the fee prescribed under section 12-63-05. The fee is nonrefundable. A person who fails an examination may apply for reexamination upon payment of the prescribed fee.
2. Each applicant for licensing must be examined by written examination as established by the board.
3. Applicants for licensing must be examined at a time and place and under supervision as the board requires.
4. Applicants may obtain their examination scores and may review their papers in accordance with rules adopted by the board.

#### **12-63-08. Exception from training requirement - Issuance of certain licenses as of right.**

1. Peace officers with experience or training outside this state before January 1, 1989, may qualify for exception from portions of the training requirement. The applicant shall apply to the board for an exception. After review the board may grant a complete or partial exception. Before the issuance of a license, the applicant must successfully complete the written examination.
2. The board shall grant a license to any person certified as a peace officer before July 1, 1989.

**12-63-09. Limited license.** Pending successful completion of the written examination required in this chapter, the board may grant a limited license to a person who has completed the education, medical, and psychological examination requirements and has been qualified to carry a sidearm. The limited license allows the person to practice peace officer duties in accordance with rules of the board. Except as otherwise provided, the limited license is valid for no longer than the earlier of the expiration of the next available training session, until the person is issued a license under section 12-63-10, or until the limited license is suspended or revoked by the board. After being employed but before taking the written examination, the person shall attend the first available basic training program recognized by the board. The limited license may be renewed one time if the person has failed the examination. On terms and conditions prescribed by the board, the limited license is limited to the jurisdiction in which the person is employed.

**12-63-10. Issuance of license.** The board shall issue a license to any person who meets the requirements of this chapter and who has paid the prescribed license fee.

#### **12-63-11. Renewal of license.**

1. A license expires three years from the date of its issuance and must be renewed in the manner prescribed by the board and on payment of a renewal fee and on a show of proof that the individual has met the requirements established by the board for continuing education. The board may provide for the late renewal of a license on payment of a late fee, but a late renewal of a license may not be granted more than one year after expiration of the license.
2. On request, the board shall grant inactive status to a licensee who does not perform the duties of a peace officer.

#### **12-63-12. Adverse license action - Appeal.**

1. The board may deny a license, refuse to renew a license, suspend a license, or revoke a license, or may impose probationary conditions if the person:
  - a. Has been convicted or pled guilty or nolo contendere before a court of competent jurisdiction in any state, or before any court, of an offense determined by the board to have a direct bearing upon a person's ability to serve as a peace officer, or the board determines, following a conviction or adjudication, that the person is not rehabilitated under section 12.1-33-02.1.
  - b. Has used unjustified deadly force in the performance of the duties as a peace officer as described in section 12.1-05-07.
  - c. Has made a false material statement under oath to the board.
  - d. Has made a false material statement to the board while obtaining or renewing a license or permit.
  - e. Has violated this chapter.
2. Denial, refusal to renew, suspension, revocation, or imposition of probationary condition on a license may be ordered by the board after a hearing in a manner provided by rules adopted by the board. An application for reinstatement may be made to the board one year from the date of the refusal to renew or the revocation of the license. The board may accept or reject an application for reinstatement and may hold a hearing to consider the reinstatement. In the case of a denial of an application, the applicant may not reapply for a period of one year from the date of the order of denial.
3. An appeal from the final decision of the board to refuse to issue, to not renew, to suspend, or to revoke a license may be made to the district court. Venue is the county in which the aggrieved person resides. The appeal must be made within ninety days from the service of the decision on the person.

**12-63-13. Notice and hearing on adverse license action.** The board may, on a verified complaint of any person setting forth facts which, if proven, would constitute grounds for refusal, suspension, nonrenewal, or revocation of a license, investigate the actions of any person holding or claiming to hold a license. Before taking the adverse action, the board shall, at least ten days before the date set for the hearing, give written notice to the subject of the adverse action of any charges made and shall afford that person an opportunity to be heard in person or by counsel on the matter. The written notice may be served by personal service or by registered mail. If service cannot be made by personal service or registered mail, then service may be made by publication in the county of residence specified by the person in the person's last communication with the board. At the time and place fixed in the notice, the board shall conduct the hearing on the charges. Both the accused person and the complainant are entitled to ample opportunity to present in person or by counsel, statements, testimony, evidence, and argument pertinent to the charges or to any defense. The board may continue the hearing from time to time.

**12-63-14. Penalty.** Any person who willfully violates this chapter is guilty of a class B misdemeanor.

**12-63-15. Temporary suspension - Appeal.**

1. The board may order a temporary suspension of a peace officer's license ex parte if the board finds, based on verified evidence, probable cause to believe that:
  - a. A peace officer has violated this chapter or a rule of the board;

- b. Continued performance of peace officer law enforcement duties would create a significant risk of serious and ongoing harm to the public while a disciplinary proceeding is pending; and
- c. Immediate suspension of the peace officer's license is required to reasonably protect the public from that risk of harm.

For purposes of this section, evidence is verified if sworn to before an officer authorized to administer oaths or equivalent affirmations.

- 2. An ex parte temporary suspension remains in effect for not more than sixty days, unless otherwise terminated by the board.
- 3. The board shall set the date of a full hearing on the cause and grounds for discipline regarding the license at a time not later than sixty days after the issuance of the ex parte temporary suspension order. Within three days after the issuance of the ex parte suspension order, the board shall serve the peace officer with a copy of the order along with a copy of the complaint and notice of the date set for the full hearing.
- 4. The peace officer may appeal the ex parte temporary suspension order prior to the full hearing. For purposes of appeal, the district court shall decide whether the board acted reasonably or arbitrarily. The court shall give priority to the appeal for prompt disposition. Unless otherwise ordered by the district court, an appeal by the peace officer of the ex parte temporary suspension order does not stay the effectiveness or validity of the ex parte temporary license suspension.

**12-63-16. Costs of prosecution - Disciplinary proceedings.** In a disciplinary proceeding in which disciplinary action is imposed against a peace officer, the board may direct the peace officer to pay the board a sum not to exceed the reasonable and actual costs of the case, including reasonable attorney's fees incurred by the board or its authorized representatives in the investigation, prosecution, resolution, and hearings, whether held before the board, a hearing officer, or administrative law judge. When applicable, the peace officer's license may be suspended until the costs are paid to the board. A peace officer may challenge the reasonableness of any cost in a hearing under chapter 28-32. The administrative law judge may approve, deny, or modify any cost, and determination of the judge is final. If requested, the hearing must occur before the peace officer's license may be suspended for nonpayment.

## **CHAPTER 12.1-13**

### **CONFIDENTIAL INFORMATION - CONFLICT OF INTEREST - IMPERSONATION**

**12.1-13-01. Disclosure of confidential information provided to government.** A person is guilty of a class C felony if, in knowing violation of a statutory duty imposed on him as a public servant, he discloses any confidential information which he has acquired as a public servant. "Confidential information" means information made available to the government under a governmental assurance of confidence as provided by statute.

#### **12.1-13-02. Speculating or wagering on official action or information.**

1. A person is guilty of a class A misdemeanor if during employment as a public servant, or within one year thereafter, in contemplation of official action by himself as a public servant or by a government agency with which he is or has been associated as a public servant, or in reliance on information to which he has or had access only in his capacity as a public servant, he:
  - a. Acquires a pecuniary interest in any property, transaction, or enterprise which may be affected by such information or official action;
  - b. Speculates or wagers on the basis of such information or official action; or
  - c. Aids another to do any of the foregoing.
2. A person is guilty of a class A misdemeanor if as a public servant he takes official action which is likely to benefit him as a result of an acquisition of a pecuniary interest in any property, transaction, or enterprise, or of a speculation or wager, which he made, or caused or aided another to make, in contemplation of such official action.

#### **12.1-13-03. Public servant's interest in public contracts.**

1. Every public servant authorized to sell or lease any property, or to make any contract in his official capacity, alone or in conjunction with other public servants, who voluntarily becomes interested individually in the sale, lease, or contract, directly or indirectly, is guilty of a class A misdemeanor.
2. Subsection 1 shall not apply to:
  - a. Contracts of purchase or employment between a political subdivision and an officer of that subdivision, if the contracts are first unanimously approved by the other members at a meeting of the governing body of the political subdivision, and a unanimous finding is entered in the official minutes of that body that the contract is necessary because the services or property contracted for are not otherwise obtainable at equal cost.
  - b. Sales, leases, or contracts entered into between school boards and school board members or school officers.

#### **12.1-13-04. Impersonating officials.**

1. A person is guilty of an offense if he falsely pretends to be:
  - a. A public servant, other than a law enforcement officer, and acts as if to exercise the authority of such public servant.
  - b. A public servant or a former public servant and thereby obtains a thing of value.

- c. A law enforcement officer.
- 2. It is no defense to prosecution under this section that the pretended capacity did not exist or the pretended authority could not legally or otherwise have been exercised or conferred.
- 3. An offense under subdivision b or c of subsection 1 is a class A misdemeanor. An offense under subdivision a of subsection 1 is a class B misdemeanor.

## **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. "License" includes a registration issued by the board.
4. "Licensee" includes an individual who is registered by the board.
5. "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.
6. "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,

2. Has completed the same requirements for firearms training as is required for North Dakota peace officers. However, if the individual fails the written examination or shooting course twice, the individual must wait at least thirty days to retake the failed portion, and if the individual fails the written examination or shooting course a third time, the individual must wait a full year before retaking the written examination or shooting course; and
3. Has provided at least one thousand hours of private investigative or private security services

**History:** Effective May 1, 2000

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-04

**93-02-01.1-06. Equivalency.** The board may waive part of or all of any training or experience requirements for individuals licensed or registered by the board based upon equivalent training or experience in any combination of the following: private security or private investigation in another state with equal or similar requirements; law enforcement in any jurisdiction with equal or similar requirements; military investigation; proprietary investigation, provided that equal or similar requirements for training as required by this chapter were met; or equivalent training in any educational institution in relevant subject matters.

**History:** Effective May 1, 2000

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-04

**93-02-01.1-07. Prohibitions.**

1. No individual, while providing private investigative services, may:
  - a. Wear, carry, use, display, or possess any identification, badge, uniform, patch, insignia, sign, decal, or other form of identification;
  - b. Make or utter any statement; or
  - c. Use, control, possess, or own any motor vehicle of any kind which is marked or identified by any sign, insignia, decal, equipment, device, or contrivance which could or might reasonably lead the general public to believe or assume that the individual has any police-type powers or that the individual or vehicle is associated in any way with a governmental law enforcement agency or other governmental agency. Examples of prohibited conduct include use of the word "police", the great seal of the state of North Dakota or the seal of any political subdivision; or use of any type of common or customary military rank.
2. No individual licensed or registered by the board under this chapter, including the holder of an agency license, may be employed full time or part time in any capacity wherein such individual has any police-type powers or access to any official law enforcement records.
3. No individual licensed or registered by the board under this chapter may solicit or accept any commission or deputization that in any way involves the authority to use or employ, or the use or employment of,

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any police-type powers, except that of a special deputy sheriff or special police officer, and then, only in the case of an emergency or disaster and only for the immediate time of the emergency or disaster.

4. As used in this section, positions with police-type powers do not include official volunteer civil defense positions or membership in the national guard, reserve, or regular armed forces of the United States, but include positions or membership in the military police, security police, or similar police functions of the regular armed forces of the United States.
5. Expert witnesses, including law enforcement officials, are exempt from being licensed or registered to provide private investigative services when used to review or research information that has been gathered or a field review of the scene is conducted, so long as there is no personal contact, such as interviewing witnesses, suspects, victims, or the use of confidential law enforcement information or records.

**History:** Effective May 1, 2000

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 12.1-13-04

**93-02-01.1-08. Surety requirements.**

1. Before a license to provide private investigative services can be issued to any individual or agency, the applicant must file with the board a certificate of insurance executed by the applicant and by an insurance company in the sum of three hundred thousand dollars of general liability with errors and omissions insurance.
2. The certificate of insurance must be conditioned on the faithful and honest conduct of the business of the applicant and the applicant's agents, employees, and independent contractors, and for the full protection of any person who deals with the applicant or the applicant's agents, employees and independent contractors. The certificate of insurance must provide that any person injured by the breach of the conditions of the insurance policy may bring an action on that insurance policy in the name of the state of North Dakota for the use of the person so injured to recover legal damages suffered by reason of breach of the conditions; provided, however, that the aggregate liability of the insurance policy, for all damages may, in no event, exceed the sum of the insurance policy. The insurance underwriter may cancel the bond or policy upon giving thirty days' notice in writing to the board and thereafter is relieved of liability for any breach of condition occurring after the effective date of the cancellation.

**History:** Effective May 1, 2000

**General Authority:** NDCC 43-30-04

**Law Implemented:** NDCC 43-30-04

**93-02-01.1-09. License - Posting.** Each individual or agency which is licensed by the board shall conspicuously display that license at all times in the licensee's place of business. If the licensee has more than one office as a

March 9, 2011

Senate Judiciary Committee Members:

My name is Francine Johnson. I am the Executive Director of the North Dakota Private Investigation & Security Board. The Board has reviewed HB 1433 which adds a new section to chapter 43-30 of the North Dakota Century code which reads as follows:

“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.”

The board would ask that the following language be added/included: “The inactive peace officer shall meet the same qualifications, testing and insurance requirements as already outlined in rule and statute.”

The board believes this addition clarifies the proposed change and does not leave room for individual interpretation.

## Larry Johnson - Belfield, ND

Name & address - a little about me

Licensed in law enforce 1988

Belfield PD Feb 90 to May 97

June 2001 to Nov 30, 09

EMT with Belfield Amb 21 years

When retired, attempted to do minor security work policing dances wedding anniversary, birthday parties, etc.

Was informed & pursuant to Chapters 43 + 923 of NDCC, I had to surrender my law enforcement license back to SDOS to board

Stark County States Atty told me as Stark County's top cop, he was more comfortable with someone <sup>with a LE license</sup> doing that work than someone with far less training & experience

SD & security personnel were the ones who got that clause into the century code but never explained to me why having a law enforce license while policing a dance is such a big conflict of interest

I presently work as a Stark County Reserve Deputy transporting prisoners & mental health subjects and just recently courtroom security as a result of the attempted shooting of a States Atty in Gettlinger.

I also went back to the Belfield PD as a reserve Officer to police dances as the only way I can legally do it is to be an employee of some govt subdivision Fed State County Municipal.

I have been approached by The Bible Camp at Medora, the alumni Assoc at DSU for security & at Tailgate parties and one benevolent club in Dix wants me for security.

As ~~it~~ is with the present NOCC, I had to refuse their contractual offers as I wish to retain my law enforce license.