

HOUSE BILL NO. 168

INTRODUCED BY D. MORTENSEN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PUBLIC DEFENDER INVESTIGATOR LICENSING
5 LAWS; REQUIRING AN INVESTIGATOR EMPLOYED BY THE OFFICE OF STATE PUBLIC DEFENDER TO
6 BE LICENSED AS A PRIVATE INVESTIGATOR AND EXEMPTING THOSE INVESTIGATORS FROM CERTAIN
7 FEES AND INSURANCE REQUIREMENTS; PROVIDING A TRANSITION SCHEDULE FOR INVESTIGATORS
8 CURRENTLY EMPLOYED BY THE OFFICE OF STATE PUBLIC DEFENDER TO BECOME LICENSED;
9 AMENDING SECTIONS 37-60-101, 37-60-105, AND 37-60-202, MCA; AND PROVIDING AN IMMEDIATE
10 EFFECTIVE DATE."

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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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14 NEW SECTION. **Section 1. Investigator qualifications.** An individual employed by the office as an
15 investigator must be licensed as provided in Title 37, chapter 60.

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17 **Section 2.** Section 37-60-101, MCA, is amended to read:

18 **"37-60-101. Definitions.** As used in this chapter, the following definitions apply:

19 (1) "Alarm response runner" means an individual employed by an electronic security company, a contract
20 security company, or a proprietary security organization to respond to security alarm system signals.

21 (2) "Armed" means an individual who at any time wears, carries, or possesses a firearm in the
22 performance of professional duties.

23 (3) "Armed carrier service" means any person or security company who transports or offers to transport
24 under armed private security guard from one place to another any currency, documents, papers, maps, stocks,
25 bonds, checks, or other items of value that require expeditious delivery.

26 (4) "Armed private investigator" means a private investigator who at any time wears, carries, or
27 possesses a firearm in the performance of the individual's duties.

28 (5) "Armed private security guard" means an individual employed by a contract security company or a
29 proprietary security organization whose duty or any portion of whose duty is that of a security guard, armored car
30 service guard, or carrier service guard and who at any time wears or carries a firearm in the performance of the

1 individual's duties.

2 (6) "Armored car service" means any person or security company who transports or offers to transport
3 under armed private security guard from one place to another any currency, jewels, stocks, bonds, paintings, or
4 other valuables of any kind in a specially equipped motor vehicle that offers a high degree of security.

5 (7) "Board" means the board of private security provided for in 2-15-1781.

6 (8) "Branch office" means any office of a licensee within the state, other than its principal place of
7 business within the state.

8 (9) "Contract security company" means any person who undertakes to provide a private security guard,
9 alarm response runner, armored car service, street patrol service, or armed carrier service on a contractual basis
10 to another person who exercises no direction and control over the performance of the details of the services
11 rendered.

12 (10) "Department" means the department of labor and industry provided for in 2-15-1701.

13 (11) (a) "Electronic security company" means a person who sells, installs, services, or maintains a
14 security alarm system and who undertakes to hire, employ, and provide alarm response runners and security
15 alarm installers on a contractual basis to another person who does not exercise direction and control over the
16 performance of the services rendered.

17 (b) The term does not include a person whose primary business is that of a locksmith and who may also
18 install closed-circuit television cameras and battery-operated door devices.

19 (12) "Firearms course" means the course approved by the board and conducted by a firearms instructor.

20 (13) "Firearms instructor" means an individual who has been approved by the board to instruct firearms
21 courses in the use of weapons.

22 (14) "Insurance adjuster" means a person employed by an insurance company, other than a private
23 investigator, who for any consideration conducts investigations in the course of adjusting or otherwise
24 participating in the disposal of any claims in connection with a policy of insurance but who does not perform
25 surveillance activities or investigate crimes against the United States or any state or territory of the United States.

26 (15) "Licensee" means a person licensed under this chapter.

27 (16) "Paralegal" or "legal assistant" means a person qualified through education, training, or work
28 experience to perform substantive legal work that requires knowledge of legal concepts and that is customarily
29 but not exclusively performed by a lawyer and who may be retained or employed by one or more lawyers, law
30 offices, governmental agencies, or other entities or who may be authorized by administrative, statutory, or court

1 authority to perform this work.

2 (17) "Person" means an individual, firm, company, association, organization, partnership, or corporation.

3 (18) "Private investigator" means:

4 (a) a person other than an insurance adjuster who for any consideration makes or agrees to make any
5 investigation with reference to:

6 ~~(a)~~(i) crimes against the United States or any state or territory of the United States;

7 ~~(b)~~(ii) the identity, habits, conduct, business, occupation, honesty, integrity, trustworthiness, efficiency,
8 loyalty, activity, movement, location, affiliations, associations, transactions, reputation, or character of any person;

9 ~~(c)~~(iii) the location, disposition, or recovery of lost or stolen property;

10 ~~(d)~~(iv) the cause or responsibility for fires, libels, losses, accidents, or injury to persons or property; or

11 ~~(e)~~(v) gathering evidence to be used before any court, board, officer, or investigating committee; or

12 (b) a person employed as an investigator by the office of state public defender established in 2-15-1029.

13 (19) "Private security guard" means an individual employed or assigned duties to protect a person or
14 property or both a person and property from criminal acts and whose duties or any portion of whose duties include
15 but are not limited to the prevention of unlawful entry, theft, criminal mischief, arson, or trespass on private
16 property or the direction of the movements of the public in public areas.

17 (20) "Process server" means a person described in 25-1-1101(1).

18 (21) "Proprietary security organization" means any person who employs a private security guard, alarm
19 response runner, armored car service, street patrol service, or armed carrier service on a routine basis solely for
20 the purposes of that person and exerts direction and control over the performance of the details of the service
21 rendered.

22 (22) "Resident manager" means the person appointed to exercise direct supervision, control, charge,
23 management, or operation of each office located in this state where the business of the licensee is conducted.

24 (23) (a) "Security alarm installer" means an individual who sells, installs, services, or maintains security
25 alarm systems to detect and signal unauthorized intrusion, movement, break-in, or criminal acts and is employed
26 by an electronic security company.

27 (b) The term does not include a person whose primary business is that of a locksmith and who may also
28 install closed-circuit television cameras and battery-operated door devices.

29 (24) (a) "Security alarm system" means an assembly of equipment and devices or a single device or a
30 portion of a system intended to detect or signal or to both detect and signal unauthorized intrusion, movement,

1 or criminal acts at a location.

2 (b) The term does not include systems that monitor temperature, humidity, or any other atmospheric
3 condition not directly related to the detection of an unauthorized intrusion or criminal act at a location.

4 (25) "Security company" means an electronic security company, a proprietary security organization, or
5 a contract security company.

6 (26) "Street patrol service" means a person providing patrols by means of foot, vehicle, or other method
7 of transportation using public streets, thoroughfares, or property in the performance of the person's duties and
8 responsibilities.

9 (27) "Unarmed private investigator" means a private investigator who does not wear, carry, or possess
10 a firearm in the performance of the individual's duties.

11 (28) "Unarmed private security guard" means an individual who is employed by a contract security
12 company or a proprietary security organization, whose duty or any portion of whose duty is that of a private
13 security guard, armored car service guard, or alarm response runner, and who does not wear, carry, or possess
14 a firearm in the performance of those duties."

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16 **Section 3.** Section 37-60-105, MCA, is amended to read:

17 **"37-60-105. Exemptions.** (1) Except as provided in subsection (2), this chapter does not apply to:

18 (a) any one person employed singly and exclusively by any one employer in connection with the affairs
19 of that employer only and when there exists an employer-employee relationship and the employee is unarmed,
20 does not wear a uniform, and is guarding inside a structure that at the time is not open to the public;

21 (b) a person:

22 (i) employed singly and exclusively by a retail merchant;

23 (ii) performing at least some work for the retail merchant as a private security guard; and

24 (iii) who has received training as a private security guard from the employer or at the employer's direction;

25 (c) an officer or employee of the United States, of this state, or of a political subdivision of the United
26 States or this state while the officer or employee is engaged in the performance of official duties unless the
27 person is employed by the office of state public defender as an investigator;

28 (d) a person engaged exclusively in the business of obtaining and furnishing information as to the
29 financial rating of persons or as to the personal habits and financial responsibility of applicants for insurance,
30 indemnity bonds, or commercial credit;

- 1 (e) an attorney at law while performing duties as an attorney at law;
- 2 (f) a legal intern, paralegal, or legal assistant employed by one or more lawyers, law offices,
3 governmental agencies, or other entities;
- 4 (g) a law student who is serving a legal internship;
- 5 (h) a collection agency or finance company licensed to do business under the laws of this state, or an
6 employee of a collection agency or finance company licensed in this state while acting within the scope of
7 employment, while making an investigation incidental to the business of the agency or company, including an
8 investigation of the location of a debtor or the debtor's property when the contract with an assignor creditor is for
9 the collection of claims owed or due or asserted to be owed or due or the equivalent;
- 10 (i) special agents employed by railroad companies, provided that the railroad company notifies the board
11 that its agents are operating in the state;
- 12 (j) insurers and insurance producers and insurance brokers licensed by the state while performing duties
13 in connection with insurance transacted by them;
- 14 (k) individuals engaged in the collection and examination of physical material for forensic purposes;
- 15 (l) an insurance adjuster, as defined in 37-60-101;
- 16 (m) an internal investigator or auditor while making an investigation incidental to the business of the
17 agency or company by which the investigator or auditor is singularly and regularly employed;
- 18 (n) a person who evaluates and advises management on personnel and human resource issues in the
19 workplace; or
- 20 (o) a certified public accountant with a license or permit to practice or a practice privilege under
21 37-50-314 or 37-50-325 to the extent that the person is engaged in an investigation relating to the practice of
22 accounting.
- 23 (2) (a) Except as provided in subsection (2)(b), persons listed as exempt in subsection (1) are not
24 exempt for the purposes of acting as registered process servers.
- 25 (b) Subsection (2)(a) does not apply to attorneys or persons who make 10 or fewer services of process
26 in a calendar year, as provided in 25-1-1101."
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28 **Section 4.** Section 37-60-202, MCA, is amended to read:

29 **"37-60-202. Rulemaking power.** The board shall adopt and enforce rules:

- 30 (1) fixing the qualifications of resident managers, licensees, holders of identification cards, and process

1 servers, in addition to those prescribed in Title 25, chapter 1, part 11, and in this chapter, necessary to promote
2 and protect the public welfare;

3 (2) establishing, in accordance with 37-1-134, application fees for original licenses and identification
4 cards, and providing for refunding of any fees, except that a person employed by the office of state public
5 defender as an investigator is exempt from the fees required by this section;

6 (3) (a) requiring approval of the board prior to the establishment of branch offices of any licensee; and

7 (b) establishing qualification requirements and license fees for branch offices identified in subsection
8 (3)(a);

9 (4) for the certification of private investigator, private security guard, security alarm installer, and alarm
10 response runner training programs, including the certification of firearms training programs;

11 (5) for the licensure of firearms instructors;

12 (6) for the approval of weapons;

13 (7) requiring licensees, except process servers and investigators employed by the office of state public
14 defender, to file an insurance policy with the board; and

15 (8) providing for the issuance of probationary identification cards for private investigators and security
16 alarm installers who do not meet the requirements for age, employment experience, or written examination."
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18 NEW SECTION. Section 5. Transition. A person employed by the office of state public defender as
19 an investigator on [the effective date of this act] must be licensed pursuant to [this act] by January 1, 2020.
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21 NEW SECTION. Section 6. Codification instruction. [Section 1] is intended to be codified as an
22 integral part of Title 47, chapter 1, part 2, and the provisions of Title 47, chapter 1, part 2, apply to [section 1].
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24 NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval.
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