



Dora
Department of Regulatory Agencies

Office of Policy, Research and Regulatory Reform

2011 Sunrise Review: Private Investigators

February 17, 2011





Executive Director's Office

Barbara J. Kelley
Executive Director

John W. Hickenlooper
Governor

February 17, 2011

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunrise reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed its evaluation of the sunrise application for regulation of private investigators and is pleased to submit this written report. The report is submitted pursuant to section 24-34-104.1, Colorado Revised Statutes, which provides that DORA shall conduct an analysis and evaluation of proposed regulation to determine whether the public needs, and would benefit from, the regulation.

The report discusses the question of whether there is a need for regulation in order to protect the public from potential harm, whether regulation would serve to mitigate the potential harm, and whether the public can be adequately protected by other means in a more cost-effective manner.

Sincerely,

Barbara J. Kelley
Executive Director

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Background

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection – only those individuals who are properly licensed may use a particular title(s) – and practice exclusivity – only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements – typically non-practice related items, such as insurance or the use of a disclosure form – and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency – depending upon the prescribed preconditions for use of the protected title(s) – and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

Sunrise Process

Colorado law, section 24-34-104.1, Colorado Revised Statutes (C.R.S.), requires that individuals or groups proposing legislation to regulate any occupation or profession first submit information to the Department of Regulatory Agencies (DORA) for the purposes of a sunrise review. The intent of the law is to impose regulation on occupations and professions only when it is necessary to protect the public health, safety or welfare. DORA must prepare a report evaluating the justification for regulation based upon the criteria contained in the sunrise statute:¹

- (I) Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety, or welfare of the public, and whether the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;
- (II) Whether the public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional or occupational competence; and
- (III) Whether the public can be adequately protected by other means in a more cost-effective manner.

Any professional or occupational group or organization, any individual, or any other interested party may submit an application for the regulation of an unregulated occupation or profession. Applications must be accompanied by supporting signatures and must include a description of the proposed regulation and justification for such regulation.

Methodology

DORA has completed its evaluation of the proposal for regulation of private investigators (PIs). During the sunrise review process, DORA performed a literature search, contacted and interviewed the applicant, reviewed licensure laws in other states, interviewed various stakeholders, including, but not limited to Colorado Independent Investigators Association, Colorado Association of Chiefs of Police, and the Society of Former Special Agents of the Federal Bureau of Investigation. In order to determine the number and types of complaints filed against PIs in Colorado, DORA contacted representatives of the Attorney General's Office Consumer Protection Section and the Denver/Boulder Better Business Bureau.

¹ § 24-34-104.1(4)(b), C.R.S.

Profile of the Profession

A private investigator (PI) is defined in the sunrise application, which was submitted by the Professional Private Investigators Association of Colorado, as a person who, for compensation, engages in, solicits business concerning, accepts employment to obtain and furnish information concerning, or offers security to obtain or furnish information concerning, the following:²

- A crime or wrong committed or threatened against the laws or government of the United States, Colorado or any other state, or a political subdivision thereof;
- The identity, habits, conduct, honesty, loyalty, whereabouts, affiliations, associations, transactions, reputation or character of any person;
- Libel, fire, losses, accident, damage to property or injury to a natural person; or
- The identity or apprehension of a person suspected of committing a crime.

PIs work in a variety of settings and are charged with assisting individuals, businesses and attorneys in obtaining and providing an analysis of information.³ Essentially, PIs are people who are paid to gather facts.⁴ During PIs' investigative work, they often utilize surveillance techniques, both "low" and "high" tech, to obtain information.⁵ Low tech surveillance typically includes observing a site, such as the home of a subject, from an inconspicuous location or a vehicle.⁶ High tech surveillance may include the use of photographic and video cameras, binoculars, cell phones, and (GPS) systems.⁷ The type of surveillance used by PIs varies, but generally, photographic and video cameras are utilized.

PIs conduct a wide variety of investigations in a variety of contexts, including, but not limited to:

- Infidelity;
- Probate;
- General legal;
- Insurance; and
- Corporate.

² PPIAC 2011 Sunrise Application, p.2-3.

³ U.S. Bureau of Labor Statistics. Occupational Outlook Handbook, 2010-11 Edition. *Private Detectives and Investigators*. Retrieved January 3, 2011, from <http://www.data.bls.gov/cgi-bin/print.pl/oco/ocos157.htm>

⁴ How Stuff Works. *How Private Investigators Work*. Retrieved January 3, 2011, from <http://www.money.howstuffworks.com/private-investigator.htm/printable>

⁵ U.S. Bureau of Labor Statistics. Occupational Outlook Handbook, 2010-11 Edition. *Private Detectives and Investigators*. Retrieved January 3, 2011, from <http://www.data.bls.gov/cgi-bin/print.pl/oco/ocos157.htm>

⁶ U.S. Bureau of Labor Statistics. Occupational Outlook Handbook, 2010-11 Edition. *Private Detectives and Investigators*. Retrieved January 3, 2011, from <http://www.data.bls.gov/cgi-bin/print.pl/oco/ocos157.htm>

⁷ U.S. Bureau of Labor Statistics. Occupational Outlook Handbook, 2010-11 Edition. *Private Detectives and Investigators*. Retrieved January 3, 2011, from <http://www.data.bls.gov/cgi-bin/print.pl/oco/ocos157.htm>

Infidelity investigations are conducted when a spouse or partner believes that his or her partner is participating in an affair with another person. PIs utilize a variety of techniques to obtain information to substantiate or debunk whether a spouse or partner is engaging in an affair. For instance, a PI may follow a suspect in an attempt to determine whether he or she is having an affair with another person. Once the PI gathers and analyzes the information collected, he or she provides the information to the client.

PIs are also hired to conduct investigations in probate situations.

There are several circumstances where a PI's services are utilized in probate issues. For example, a court may enlist the services of a PI to obtain a list of heirs who have unclaimed assets of an estate. Oftentimes, these services are required when someone dies without making a valid last will and testament.⁸ Also, a probate court may retain the services of a PI for a probate investigation because the court may know the name of an heir(s) of an estate but does not know how to locate them.⁹

Additionally, PIs provide investigative services in the general legal setting. A PI may assist in the preparation of criminal defenses, locating witnesses, serving legal documents, interviewing police and prospective witnesses and gathering and reviewing evidence.¹⁰ PIs also may collect information on the parties to litigation, take photographs, testify in court and assemble evidence and reports for trials.¹¹

PIs also provide investigative work concerning fraudulent insurance claims, such as workers' compensation claims. These specific investigations involve PIs carrying out long-term covert observation of a person suspected of workers' compensation fraud.¹² If the PI witnesses a person performing an activity that contradicts injuries stated in a workers' compensation claim, the PI would take video or still photographs to document the activity and report it to the client (insurance company).¹³

⁸ Ezinearticles. *Understanding What An Heir Search Service Does*. Retrieved January 7, 2011, from <http://ezinearticles.com/?Understanding-What-An-Heir-Search-Service-Does&id=5512168>

⁹ Ezinearticles. *Understanding What An Heir Search Service Does*. Retrieved January 7, 2011, from <http://ezinearticles.com/?Understanding-What-An-Heir-Search-Service-Does&id=5512168>

¹⁰ U.S. Bureau of Labor Statistics. Occupational Outlook Handbook, 2010-11 Edition. *Private Detectives and Investigators*. Retrieved January 3, 2011, from <http://www.data.bls.gov/cgi-bin/print.pl/oco/ocos157.htm>

¹¹ U.S. Bureau of Labor Statistics. Occupational Outlook Handbook, 2010-11 Edition. *Private Detectives and Investigators*. Retrieved January 3, 2011, from <http://www.data.bls.gov/cgi-bin/print.pl/oco/ocos157.htm>

¹² U.S. Bureau of Labor Statistics. Occupational Outlook Handbook, 2010-11 Edition. *Private Detectives and Investigators*. Retrieved January 3, 2011, from <http://www.data.bls.gov/cgi-bin/print.pl/oco/ocos157.htm>

¹³ U.S. Bureau of Labor Statistics. Occupational Outlook Handbook, 2010-11 Edition. *Private Detectives and Investigators*. Retrieved January 3, 2011, from <http://www.data.bls.gov/cgi-bin/print.pl/oco/ocos157.htm>

PIs may also work as corporate investigators, who conduct internal and external investigations for corporations.¹⁴ During internal investigations, PIs may investigate drug use in the workplace, ensure that expense accounts are not abused, or determine whether employees are stealing assets, merchandise or information.¹⁵

External investigations related to corporate investigations attempt to thwart criminal schemes from outside the corporation, such as fraudulent billing by a supplier.¹⁶

¹⁴ U.S. Bureau of Labor Statistics. Occupational Outlook Handbook, 2010-11 Edition. *Private Detectives and Investigators*. Retrieved January 3, 2011, from <http://www.data.bls.gov/cgi-bin/print.pl/oco/ocos157.htm>

¹⁵ U.S. Bureau of Labor Statistics. Occupational Outlook Handbook, 2010-11 Edition. *Private Detectives and Investigators*. Retrieved January 3, 2011, from <http://www.data.bls.gov/cgi-bin/print.pl/oco/ocos157.htm>

¹⁶ U.S. Bureau of Labor Statistics. Occupational Outlook Handbook, 2010-11 Edition. *Private Detectives and Investigators*. Retrieved January 3, 2011, from <http://www.data.bls.gov/cgi-bin/print.pl/oco/ocos157.htm>

Proposal for Regulation

The Professional Private Investigators Association of Colorado (Applicant) submitted a sunrise application to the Department of Regulatory Agencies (DORA) for review in accordance with the provisions of section 24-34-104.1, Colorado Revised Statutes. The application identifies licensure as the appropriate level of regulation to protect the public, but it also states that phasing in licensure during a defined period would be acceptable.

Although the sunrise application does not highlight specific information related to the qualifications for licensure, the Applicant provided a “model” concerning the regulation of private investigators (PIs) in Colorado. Additionally, the sunrise application sets the minimum standards that an applicant should be required to fulfill in order to be eligible for licensure, which include:

- Have no conviction of a felony and have no conviction of a Class 1 misdemeanor within the previous 10 years of application;
- Be 21 years of age or older;
- Be legally present in the United States;
- Pass a test concerning those provisions of the Colorado Revised Statutes, which affect the practice and activities of private investigations; and
- Pass a fingerprint-based criminal background check.

The model legislation delineates three levels of regulation: intern, apprentice and full licensure.

In order to be eligible to obtain an intern license, an applicant would have to be employed by a Colorado-licensed PI. Also, applicants would be required to possess less than 1,500 hours of experience as a PI.

In order to be eligible to obtain an apprentice PI license, an applicant would have to possess a minimum of 1,500 hours of experience as a PI or have completed a degree in law enforcement, law, legal studies or criminal justice from an accredited institution of higher education. Further, eligibility for an apprentice PI license would be dependent on whether the applicant has completed either of the requirements within the past five years.

To be eligible for a full PI license, an applicant would be required to possess a minimum of 4,000 hours of verifiable experience within the past five years.

Importantly, the “model” of regulation provides a number of exclusions. Specifically, PIs would not include:

- Persons or employees who are conducting an investigation on the person’s or employee’s own behalf or on behalf of the employer if the employer is not a private investigator;
- Employees of licensed attorneys;
- Certified peace officers of law enforcement agencies operating in their official capacity;
- *Bona fide* journalists or genealogists; and
- Persons serving civil process.

Summary of Current Regulation

Beginning in 1887, Colorado required anyone operating a detective business to obtain a license from the Secretary of State.¹⁷ Such a business was required to post a bond of between \$3,000 and \$20,000, as determined by the Attorney General.¹⁸

A license could be revoked if,

upon just cause being shown and after a fair opportunity, upon reasonable notice, has been offered to such licensee to show cause why such a license should not be revoked.¹⁹

Finally, it was a misdemeanor, punishable by a fine of between \$300 and \$1,000, between 3 and 12 months imprisonment, or both, to operate a detective business without a license,²⁰ or, if licensed, to:

- Induce a confession of any crime by any threat, torture, promise of immunity from punishment, or offer of a reward;
- Threaten publicity or other communication to any particular person of facts or information gained or acquired in the transaction of the detective business; or
- Induce, persuade, or compel any other person to pay or deliver to the licensee any money or other thing of value.²¹

However, since the term “detective business” was not defined in statute and the Secretary of State lacked the ability to define it by rule, in 1977, the Colorado Supreme Court found the statute to be unconstitutionally vague.²² The General Assembly repealed the statute in House Bill 84-1063.

Since 1984, the Department of Regulatory Agencies has completed four sunrise reviews (1985, 1987, 2000 and 2006) related to private investigators (PIs). Each of the four sunrise reviews recommended against state regulation due to the lack to harm to consumers.

¹⁷ § 12-21-101, C.R.S. (1984).

¹⁸ § 12-21-103, C.R.S. (1984)

¹⁹ § 12-21-108(2), C.R.S. (1984).

²⁰ § 12-21-109, C.R.S. (1984).

²¹ § 12-21-110, C.R.S. (1984).

²² *People v. Ro'Mar*, 559 P.2d 710, (Colo. 1977).

The Colorado Regulatory Environment

Colorado does not license, certify or register PIs, and there is no federal law requiring PIs to be licensed, certified, or registered.

However, one municipality regulates PIs - the City of Durango. The City of Durango requires PIs to obtain a license prior to conducting business as a PI within the city limits. Licensing requirements for PIs working in the City of Durango city limits include:

- Passing a fingerprint check, which checks the fingerprint images in a fingerprint database;
- Passing a Colorado Bureau of Investigation background check, which is a name-based search of criminal history records; and
- Paying the applicable business licensing fee (total fee is currently \$330, which includes the fingerprint and background check fees).

According to City of Durango staff, there are currently five PIs who are licensed to work within the city limits.

Although there is no state-wide formal regulatory oversight of PIs in Colorado, there are numerous state laws, both criminal and civil, that address issues where PIs could compromise public protection. Most of these laws can be found in Titles 18 and 42 (for criminal laws) as well as Titles 2, 5, 6 and 12 (for civil laws) within the Colorado Revised Statutes (C.R.S.).

For example, the Colorado stalking law, which is located in section 18-3-601, *et seq.*, C.R.S., in part, defines stalking as when a person directly, or indirectly through another person,

...makes a credible threat to another person and, in connection with such threat, repeatedly makes any form of communication with that person, a member of that person's immediate family or someone with whom that person has or has had a continuing relationship, regardless of whether a conversation ensues.²³

Colorado's law against theft provides protection to consumers. In fact, section 18-4-401(1), C.R.S, defines theft as when a person knowingly obtains or exercises control over anything of value without authorization or by threat or deception.

It is important to note that the aforementioned laws have general applicability and are not specific to PIs, but instead address potential issues associated with possible harm to consumers related to PIs.

²³ §18-3-602(1)(b), C.R.S.

Federal Statutes

There are also several federal statutes that provide protection to consumers, including but not limited to the Gramm-Leach Bliley Act (GLB Act), which was enacted by Congress in 1999, and the Driver's Privacy Protection Act, which was enacted by Congress in 1994. Generally, the GLB Act includes provisions to protect consumers' personal financial information.²⁴ More specifically, the GLB Act contains three principal parts to the aforementioned privacy requirements:

- The Financial Privacy Rule;
- The Safeguards Rule; and
- The pretexting provisions.

The Financial Privacy Rule governs the collection and disclosure of consumers' personal financial information by financial institutions.²⁵

The Safeguards Rule requires all financial institutions to design, implement and maintain safeguards to protect consumer information.²⁶ The Safeguards Rule applies not only to financial institutions that collect information from their own customers, but also to financial institutions such as credit reporting agencies that receive customer information.²⁷

The GLB Act also provides protection to consumers from individuals and companies that obtain their financial information under false pretenses, a practice known as "pretexting."²⁸

Additionally, the Driver's Privacy Protection Act limits the disclosure of personal information that is maintained by state departments of motor vehicles. Personal information is defined as,

information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations and driver's status.²⁹

²⁴ Federal Trade Commission. *The Gramm-Leach Bliley Act*. Retrieved January 17, 2011, from <http://www.ftc.gov/privacy/privacyinitiatives/glbact.html>

²⁵ Federal Trade Commission. *The Gramm-Leach Bliley Act*. Retrieved January 17, 2011, from <http://www.ftc.gov/privacy/privacyinitiatives/glbact.html>

²⁶ Federal Trade Commission. *The Gramm-Leach Bliley Act*. Retrieved January 17, 2011, from <http://www.ftc.gov/privacy/privacyinitiatives/glbact.html>

²⁷ Federal Trade Commission. *The Gramm-Leach Bliley Act*. Retrieved January 17, 2011, from <http://www.ftc.gov/privacy/privacyinitiatives/glbact.html>

²⁸ Federal Trade Commission. *The Gramm-Leach Bliley Act*. Retrieved January 17, 2011, from <http://www.ftc.gov/privacy/privacyinitiatives/glbact.html>

²⁹ 18 U.S.C. § 2725(3).

Regulation in Other States

According to the sunrise application, 44 states have state laws that regulate PIs. The only states that do not have state laws to regulate PIs are: Alabama, Alaska, Colorado, Idaho, Mississippi and Wyoming. However, there is municipal regulation in at least three of these states: Alabama, Alaska and Colorado. See Table 1.

The regulatory framework regarding PIs differs from state-to-state. That is, there is not a uniform or “standard” regulatory framework utilized for PIs. For instance, some states require the passage of an examination prior to obtaining a license, and some states require PIs to possess insurance or a surety bond prior to obtaining licensure. However, most states require the passage of a background check, which checks the criminal history of an applicant, prior to being eligible for licensure. Table 1 highlights the most common elements for licensure in the states that regulate PIs.

Table 1
Regulation in Other States

State	Regulates		Background Check	Examination	Insurance or Surety Bond
	Agency	Investigator			
Alabama (Local Municipalities)	X				
Alaska (Fairbanks Only)		X	X		\$1,000 bond
Arizona	X	X	X		
Arkansas	X	X	X	X	
California		X	X	X	\$500,000 of insurance if carrying a weapon for loss due to bodily injury or death and \$500,000 for one loss due to injury or destruction of property
Colorado (Durango Only)		X	X		
Connecticut		X ³⁰	X		\$10,000 bond and \$300,000 general liability insurance
Delaware	X	X	X		\$5,000 for companies with no employees; \$1,000,000 for companies with employees; \$1,000,000 per occurrence liability insurance
Florida	X	X ³¹	X	X	
Georgia	X	X ³²	X	X	\$25,000 insurance
Hawaii	X	X ³³	X	X	\$5,000 bond
Idaho					

³⁰ Connecticut – Employees must be registered – background check required.

³¹ Florida – Interns are also regulated.

³² Georgia – Private investigators are registered.

³³ Hawaii – Principal detectives are regulated. Other employees must be registered.

State	Regulates		Background Check	Examination	Insurance or Surety Bond
	Agency	Investigator			
Illinois	X	X ³⁴	X	X	\$1,000,000 liability insurance
Indiana	X		X		\$100,000 liability insurance
Iowa	X		X		\$5,000 bond
Kansas	X	X ³⁵	X	X Open Book	\$100,000 insurance
Kentucky	X	X	X	X	Combined single-limit insurance policy of \$250,000
Louisiana	X	X ³⁶	X	X	
Maine		X ³⁷	X	X	Resident-\$10,000; Non-Resident-\$50,000; Investigative Assistant-\$20,000
Maryland	X	X	X		\$1,000,000 general liability insurance if more than 5 employees
Massachusetts	X	X	X		\$5,000 bond
Michigan	X	X ³⁸	X		\$10,000 bond
Minnesota		X	X		\$10,000 bond
Mississippi					
Missouri	X	X ³⁹	X	X If experience requirements are not met.	\$250,000 liability insurance
Montana		X ⁴⁰	X	X	\$500,000 general liability which includes personal injury
Nebraska	X	X	X	X	\$10,000 bond
Nevada	X	X ⁴¹	X	X	\$200,000 general liability
New Hampshire	X	X ⁴²	X		\$50,000 bond
New Jersey	X	X ⁴³	X		\$5,000 bond
New Mexico	X	X ⁴⁴	X	X Jurisprudence Only	\$10,000 bond
New York	X	X	X	X	\$10,000 bond
North Carolina	X	X	X	X	\$10,000 bond
North Dakota		X ⁴⁵	X	X	\$300,000 general liability insurance
Ohio		X ⁴⁶	X	X	\$100,000 for each person and \$300,000 for each occurrence of bodily injury

³⁴ Illinois – Unlicensed employees must be registered.

³⁵ Kansas – Employees also regulated.

³⁶ Louisiana – Apprentices and journeymen also regulated.

³⁷ Maine – Also regulates Investigative Assistants.

³⁸ Michigan – Only one person must be licensed.

³⁹ Missouri – Unlicensed employees are registered.

⁴⁰ Montana – Including trainees.

⁴¹ Nevada – Unlicensed employees must be registered.

⁴² New Hampshire – Unlicensed employees must be registered.

⁴³ New Jersey – Unlicensed employees must be registered.

⁴⁴ New Mexico – Unlicensed employees must be registered.

⁴⁵ North Dakota – Unlicensed employees must be registered.

⁴⁶ Ohio – Unlicensed employees must be registered.

State	Regulates		Background Check	Examination	Insurance or Surety Bond
	Agency	Investigator			
Oklahoma	X	X ⁴⁷	X	X	\$100,000 for agencies and \$5,000 bond for self-employed investigators
Oregon	X	X	X	X	\$5,000 bond
Pennsylvania	X	X	X	X	\$5,000 bond
Rhode Island		X	X		\$5,000 bond
South Carolina		X ⁴⁸	X		\$10,000 bond
South Dakota					
Tennessee	X	X	X	X One measures PI competence; other tests on management of firm	\$10,000 bond
Texas	X	X ⁴⁹	X	X For Managers Only	\$10,000 bond
Utah	X	X ⁵⁰	X		\$10,000 bond
Vermont	X	X ⁵¹	X	X	
Virginia		X	X		
Washington		X	X	X If experience requirements are not met.	Liability insurance of \$25,000 bodily injury and \$25,000 property damage or a \$10,000 bond
West Virginia	X	X	X		\$2,500 bond
Wisconsin	X	X ⁵²	X	X 100-Question (Open Book)	Individuals must be covered by a general liability policy maintained by the agency or a \$2,000 bond
Wyoming					

⁴⁷ Oklahoma – Unlicensed employees must be registered.

⁴⁸ South Carolina – Unlicensed employees must be registered.

⁴⁹ Texas – Private investigators must be registered.

⁵⁰ Utah – Apprentices are also regulated.

⁵¹ Vermont – Unlicensed employees must be registered.

⁵² Wisconsin – Private investigators must be employed by an agency.

Analysis and Recommendations

Public Harm

The first sunrise criterion asks:

Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety or welfare of the public, and whether the potential for harm is easily recognizable and not remote or dependent on tenuous argument.

Before moving forward in the analysis of harm, it is important to identify what constitutes harm to consumers. Private investigators (PIs) could harm consumers by inappropriately using personal information obtained, either by utilizing the information collected to commit identity theft or using the information to harass or intimidate consumers.

In an attempt to measure the scope and extent of harm caused to consumers by unregulated PIs, the sunrise application requests specific examples of harm to be provided to the Department of Regulatory Agencies (DORA). The Professional Private Investigators Association of Colorado (Applicant) provided examples to DORA in its sunrise application.

There are several examples of harm in the sunrise application that highlight questionable past behavior (e.g., criminal convictions, drug use, etc.) by PIs, but the examples do not allege or clearly delineate how or if actual harmed occurred while working in the capacity of a PI. These examples are highlighted in cases 1 through 8 and an analysis of the cases follows. With the exception of minor grammatical corrections, the examples of harm presented below are verbatim from the sunrise application.

Examples of Harm to Consumers Provided by the Applicant

Case 1

A Colorado process server and part-time investigator was convicted of two counts of sexual assault on a child, four counts of sexual assault on a child and two counts of second degree sexual assault. He also served a mandatory sentence for violent crime.

Case 2

A California man has made news in several areas: counts of bestiality and defrauding clients and investigators. This man is an ex-law enforcement officer in Orange County, California. Because there is no licensing in Colorado, he was able to advertise as working out of the State of Colorado (in addition to several other states).

Case 3

A woman was arrested on outstanding warrants in Arapahoe County for theft and drug charges, and lists herself as a self-employed PI. Her rap sheet includes many aliases, theft, drug, forgery and parole violation arrests over a decade.

Case 4

A Colorado PI claimed Navy Seal status on his webpage. He has served in the Navy for 1.5 years, and was never a Navy Seal.

Case 5

An Aurora man ran a security firm/investigations business. Claiming military service, he offered "search and rescue" utilizing techniques that would violate the Colorado wiretapping and electronic surveillance statutes. His military service was actually with the Civil Air Patrol, which is a volunteer organization. His resume was filled with fraudulent claims.

Case 6

A Pueblo man claims to be a private investigator. Incarcerated for four years, he claims that he now has a special understanding of criminals (it takes one to know one).

Case 7

In Federal Heights, a woman was arrested on charges of failure to appear in a theft case and possession of a controlled substance while identifying herself as a Colorado PI. The arrest record contains more than a dozen aliases and a long history of arrests for dangerous drugs, theft, possession and sale of dangerous drugs, forgery, selling amphetamine, larceny, violation of bail, violating parole and seventeen instances of failure to appear/fugitive.

Case 8

In 1983, a bail bondsman, who was a convicted felon in Texas, pleaded guilty to more than 80 counts of forgery. Later, a Denver-area Yellow Pages ad appeared, identifying him as a PI.

Analysis

The aforementioned cases highlight instances where the conduct and past actions of the PIs are of serious concern and, in some cases, reprehensible. However, the information does not clearly allege that they harmed consumers while working as PIs in Colorado.

It must be acknowledged that the existence of any type of regulatory program is no assurance that behavior of the kind described above would not have otherwise occurred. Conversely, it is not known if registration or licensing requirements might have deterred some of the more obvious forms of misconduct and misrepresentations.

The Applicant as well as DORA staff identified examples of harm suffered by consumers from unregulated PIs. Such matters include stalking, felony menacing, obtaining information under false pretenses, unlawful surveillance operations, blackmail, commission of burglary and criminal trespassing, illegal sale or offer for sale of an individual's credit report, social security number and other personal data, fraud and theft.

In many of the examples noted above, the PI was arrested, charged, convicted and/or fined through the criminal justice system. It is not known, however, how many other instances of similar misconduct may have been handled through the civil courts in actions brought by the victims, and the rate of successful recovery. It is therefore difficult to determine the extent to which the courts are an effective, accessible and affordable means of redress for consumers harmed in this manner by PIs.

Attorney General's Office Consumer Protection Section Complaints

Additionally, in an attempt to further identify harm to consumers by unregulated PIs, DORA contacted the Attorney General's Office Consumer Protection Section (AGO). According to AGO staff, during the last five years, there were a total of five complaints filed against PIs or PI companies.

Three of the complaints involved fee disputes between the consumer and the PI.

One of the complaints alleged fraud and identify theft from a PI who was licensed in Florida. While the alleged violation occurred in Colorado, AGO staff believed that because the PI was licensed in Florida, the AGO does not have immediate jurisdiction. AGO staff recommended that the consumer contact the Florida Attorney General's Office for assistance.

One complaint was related to misrepresentation, and the complaint was referred to the Denver/Boulder Better Business Bureau (BBB). At the time of this writing, the case is still active.

Analysis

There were very few complaints filed against PIs with the AGO in the past five years, and three were related to fee disputes, which regulation does not generally address.

Denver/Boulder Better Business Bureau Complaints

DORA also requested information from the BBB concerning complaints against PIs. BBB staff stated that 29 complaints (one complaint was actually a compliment of a PI company) have been filed against PIs in the past three years. The information provided by BBB staff indicates that 14 of the 28 complaints were for non-completion of services, which entails the PI company promising to provide services to consumers, but then failing to complete minimal work or failing to provide any service that was agreed upon in the contract.

Also, three of the complaints filed against PIs were for false advertising on their websites.

Two complaints were related to PIs falsely listing themselves as members of the BBB on their websites.

One complaint each:

- Involved a woman (who is not employed by the PI company) pretending to be associated with the company and scamming people out of money.
- Involved a PI harassing a consumer by repeatedly showing up at his home and requesting information even though the consumer was not the person the PI was looking for.
- Involved a PI company that was accused of taking money from multiple clients.
- Involved employees of a PI company who misrepresented the type of services (expertise) offered.
- Involved a PI who misrepresented contract terms (fee for service).
- Involved a PI company that provided erroneous information to Google for its listing.

Analysis

According to BBB staff, fewer complaints regarding PIs are received, compared to other professions. Also, BBB staff stated that the vast majority of complaints that were filed against PIs were resolved (BBB staff did not provide complete data to corroborate this assertion). That is, the complaint was addressed to the satisfaction of the consumer. The limited number of complaints and the current process utilized by the BBB further calls into question the extent of consumer harm, and therefore the need for licensure, as highlighted in the sunrise application.

Need for Regulation

The second sunrise criterion asks:

Whether the public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional or occupational competence.

This criterion asks whether the state should require education and/or impose an examination requirement for licensure.

The information obtained by DORA (information in the sunrise application and DORA's additional contacts) for this sunrise review does not specifically indicate that consumer harm is attributable to PI competency issues, per se. It is, however, noteworthy that of the states which currently regulate PIs, the vast majority require some form of examination. See, Table 1.

Further, since the majority of alleged violations perpetrated by PIs appear to be violations of existing laws, a jurisprudence examination, which would test a candidate's knowledge of existing laws, may be appropriate.

Alternatives to Regulation

The third sunrise criterion asks:

Whether the public can be adequately protected by other means in a more cost-effective manner.

Consumer protection could potentially be realized in a more cost-effective manner than the creation of a full fledged licensing program for PIs. First, a less restrictive type of regulation, registration, could provide protection to consumers without creating an unnecessary barrier to entry into the PI profession. It would appear that a more effective, and less intrusive, form of regulation could be a registry, with a bond or insurance requirement as a condition of eligibility for listing. Again, of the states which currently regulate PIs, almost all require some form of financial instrument to secure performance/compliance. See, Table 1.

One possible scenario would be to create a registration system, where in order to practice as a PI, an individual must register with the State of Colorado. In order to be eligible to be listed on the registry, the individual could be required to pass a background and/or a fingerprint check. Recall that a background check entails a name-based search, within a database or databases for criminal history records, while a fingerprint check uses the fingerprints of individuals to determine whether they have a criminal record.

A registry could serve two purposes: allow consumers to access information to ensure that a PI they wish to engage passed a background and/or finger print check and create a mechanism that removes PIs from a state-approved list if they engaged in prohibited conduct.

Based on the harm and the potential harm to consumers identified during this sunrise review, the creation of a state registry may be a viable option to enhance consumer protection.

Conclusion

PIs are responsible for conducting investigations in a wide variety of settings. As outlined previously in this sunrise review, PIs are charged with gathering information related to both individuals and companies and reporting their findings to their client. The process of gathering information is as diverse as the settings that PIs operate in.

Certain types of investigations require that surveillance techniques be utilized, such as taking photographs of persons in infidelity cases. While other investigations, such as probate, require PIs to search records and, at times, interview people in order to find missing heirs to an estate.

Regardless of the nature of the investigation, however, the common goal of PIs is to gather information and report their findings to the client.

The sunrise application submitted to DORA requested licensure of PIs. The application asserts that regulating PIs would serve two purposes: prevent charlatans, liars, cheats and criminals from practicing; and would assist them in gaining access to sensitive information via motor vehicle records, court documents, etc.

There are currently two avenues a PI may utilize in order to obtain personal information on individuals: Division of Motor Vehicles (DMV) within the Department of Revenue database and private database companies, which are computer based companies. Each avenue may contain slightly different information that may be beneficial to PIs. For example, the DMV offers information such as accident reports, affidavits of liability and vehicle title documents, while the private database companies offer personal information such as addresses, phone numbers, warrant and arrest records, etc.

DORA staff interviewed staff with the DMV regarding the process of obtaining information on individuals. Personal information is, in fact, available to PIs if they complete the required information request. As such, it is unclear how regulation, as asserted by the Applicant, would assist PIs in gaining access to information via the DMV.

Also, the private companies that offer personal information, for a fee, require the person, regardless of whether the person is a PI, to provide personal information in order to access the databases. Because anyone can access these private company databases, it is unclear how government regulation would enhance access to information.

More importantly, regulation, in any form, is intended to provide protection to consumers instead of enabling practitioners, in this case PIs, to gain access to personal information.

The Applicant has requested licensure of PIs in Colorado. Licensure, in its purest form, entails a minimum level of education and the passage of an examination to measure a minimum level of competency. This sunrise review revealed issues associated with violations of current laws rather than competency issues. It is, however, noteworthy that of the states which currently regulate PIs, the vast majority require some form of examination. See, Table 1.

There were instances identified during this sunrise review where consumers could have been harmed financially by PIs. In fact, half (14) of the complaints received by the BBB related to PIs were for PIs failing to provide agreed upon services to consumers. It is important to note that BBB staff indicated that the vast majority of the consumer complaints against PIs were resolved to the satisfaction of the consumer. However, there is a potential that consumers may be harmed financially by PIs if they fail to complete agreed upon services.

As such, PIs should be regulated by the State of Colorado and be required to possess either a surety bond or errors and omissions insurance. PIs should also be required to pass a jurisprudence examination, which will test a candidate's knowledge on current Colorado laws that are relevant to the PI profession. Providing regulatory oversight will enhance consumer protection as well as provide an avenue of recourse for consumers who have been harmed financially by PIs.

Recommendation – Regulate Private Investigators and require either a surety bond or errors and omissions insurance and passage of a jurisprudence examination.