



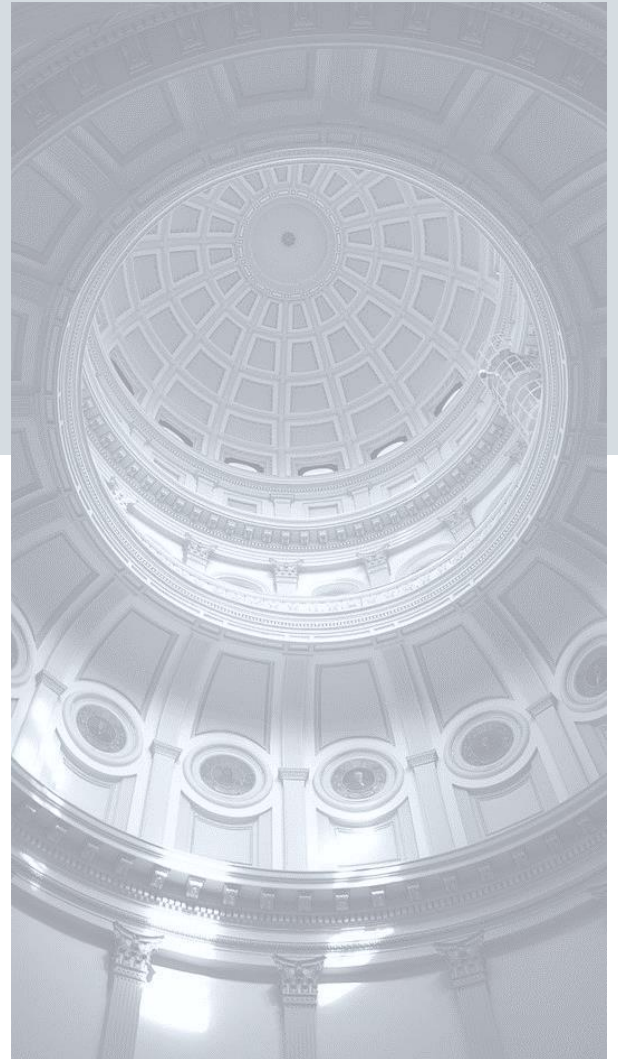
COLORADO

**Department of
Regulatory Agencies**

Colorado Office of Policy, Research &
Regulatory Reform

2019 Sunset Review

Private Investigators Licensure Act



October 15, 2019



COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

October 15, 2019

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 Colorado General Assembly established the sunset review process in 1976 as a way to analyze and evaluate regulatory programs and determine the least restrictive regulation consistent with the public interest. Since that time, Colorado's sunset process has gained national recognition and is routinely highlighted as a best practice as governments seek to streamline regulation and increase efficiencies.

Section 24-34-104(5)(a), Colorado Revised Statutes (C.R.S.), directs the Department of Regulatory Agencies to:

- Conduct an analysis of the performance of each division, board or agency or each function scheduled for termination; and
- Submit a report and supporting materials to the Office of Legislative Legal Services no later than October 15 of the year preceding the date established for termination.

The Colorado Office of Policy, Research and Regulatory Reform (COPRRR), located within my office, is responsible for fulfilling these statutory mandates. Accordingly, COPRRR has completed the evaluation of the Private Investigators Licensure Act. I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2020 legislative committee of reference.

The report discusses the question of whether there is a need for the regulation provided under Article 58.5 of Title 12, C.R.S. The report also discusses the effectiveness of the Director of the Division of Professions and Occupations in carrying out the intent of the statutes and makes recommendations for statutory change.

Sincerely,

Patty Salazar
Executive Director





COLORADO

Department of Regulatory Agencies

Colorado Office of Policy, Research &
Regulatory Reform

2019 Sunset Review

Private Investigators Licensure Act

SUMMARY

What is regulated?

The Department of Regulatory Agencies' Division of Professions and Occupations (Division) administers the Private Investigators Licensure Act (Act). A private investigator (PI) is a private sector professional who, for some consideration, accepts employment to conduct an investigation. PIs gather information for many types of inquiries including legal, financial, personal information, background checks, missing person searches, and computer crimes, among others.

Why is it regulated?

The Act explains that it is necessary to regulate PIs because the absence of compulsory regulation would permit any person, regardless of his or her background or criminal record, to present him- or herself as a PI and conduct private investigations.

Who is regulated?

During fiscal year 17-18, there were 370 Level I and 515 Level II private investigators licensed in Colorado.

How is it regulated?

To obtain a Level I PI license, a person must be 21 years old, pass a fingerprint background check, pass a jurisprudence examination, and have surety in place. A Level II PI license requires an additional 4,000 hours of experience. There are no duties that a Level II may perform that a Level I may not perform.

What does it cost?

During fiscal year 17-18, the Division expended \$74,003 and allotted 0.60 full-time equivalent employees to program administration.

What disciplinary activity is there?

Since June 1, 2015, there have been 77 complaint files opened and only eight disciplinary actions taken. Of those eight actions, six were conditional licenses, issued to individuals because of their behavior prior to being licensed, not after they were licensed. Of the remaining actions, two were dispensed to one individual who was issued a letter of admonition as well as a practice stipulation for harassment against another PI.

KEY RECOMMENDATIONS

Sunset the Private Investigators Licensure Act.

Prior to passage of the Act, it was believed that there may have been a slight chance that the public could be financially harmed by not regulating PIs. However, the data now verify that this harm does not occur. Disciplinary actions against licensed individuals are virtually nonexistent. When discipline has been taken, the infractions have not been directly associated with the harming of a consumer.

The argument most often used to illustrate the need for licensing is that PIs gain access to sensitive personal information and should be licensed to ensure they have been vetted. However, the most sensitive data are regulated and are accessible to only those individuals that have been vetted by the operators of the databases. The Colorado Office of Policy, Research, and Regulatory Reform (COPRRR) contacted the Colorado Bureau of Investigation's Identity Theft/Cybercrimes Unit inquiring about how often, and the number of complaints received regarding PIs committing identity theft. CBI responded that no complaints have been received involving a PI. COPRRR also contacted the Office of the Colorado Attorney General. It reported that a PI has not been identified as a potential investigative target.

Consequently, because the public interest is not protected from clear, understandable harm by the licensing of PIs, the General Assembly should sunset the Private Investigators Licensure Act.

METHODOLOGY

As part of this review, COPRRR staff met with Division staff, reviewed program records, contacted officials with state agencies, interviewed officials of national professional associations and several private investigators; reviewed Colorado statutes and rules, and reviewed the laws of other states.

MAJOR CONTACTS MADE DURING THIS REVIEW

Allstate Insurance Company
Colorado Bar Association
Colorado Bureau of Investigation-Identity Theft/Cybercrimes Unit
Colorado District Attorneys' Council
Colorado Division of Insurance
Colorado Division of Professions and Occupations
Colorado Trial Lawyers Association
IDI data
IRBsearch
National Council of Investigation and Security Services
Office of the Colorado Attorney General
Professional Private Investigators Association of Colorado
TLOxp/Transunion

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are prepared by:
Colorado Department of Regulatory Agencies
Colorado Office of Policy, Research and Regulatory Reform
1560 Broadway, Suite 1550, Denver, CO 80202
www.dora.colorado.gov/opr



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Background

Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) within the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria¹ and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- I. Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- II. If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- III. Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- IV. Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- V. Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- VI. The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- VII. Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- VIII. Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;

¹ Criteria may be found at § 24-34-104, C.R.S.

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- IX. Whether the agency through its licensing or certification process imposes any sanctions or disqualifications on applicants based on past criminal history and, if so, whether the sanctions or disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subsection (5)(a) of this section must include data on the number of licenses or certifications that the agency denied based on the applicant's criminal history, the number of conditional licenses or certifications issued based upon the applicant's criminal history, and the number of licenses or certifications revoked or suspended based on an individual's criminal conduct. For each set of data, the analysis must include the criminal offenses that led to the sanction or disqualification; and
- X. Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

Sunset reports are organized so that a reader may consider these criteria while reading. While not all criteria are applicable to all sunset reviews, the various sections of a sunset report generally call attention to the relevant criteria. For example,

- In order to address the first criterion and determine whether a particular regulatory program is necessary to protect the public, it is necessary to understand the details of the profession or industry at issue. The Profile section of a sunset report typically describes the profession or industry at issue and addresses the current environment, which may include economic data, to aid in this analysis.
- To ascertain a second aspect of the first sunset criterion--whether conditions that led to initial regulation have changed--the History of Regulation section of a sunset report explores any relevant changes that have occurred over time in the regulatory environment. The remainder of the Legal Framework section addresses the third sunset criterion by summarizing the organic statute and rules of the program, as well as relevant federal, state and local laws to aid in the exploration of whether the program's operations are impeded or enhanced by existing statutes or rules.
- The Program Description section of a sunset report addresses several of the sunset criteria, including those inquiring whether the agency operates in the public interest and whether its operations are impeded or enhanced by existing statutes, rules, procedures and practices; whether the agency performs efficiently and effectively and whether the board, if applicable, represents the public interest.
- The Analysis and Recommendations section of a sunset report, while generally applying multiple criteria, is specifically designed in response to the tenth criterion, which asks whether administrative or statutory changes are necessary to improve agency operations to enhance the public interest.

These are but a few examples of how the various sections of a sunset report provide the information and, where appropriate, analysis required by the sunset criteria. Just as not all criteria are applicable to every sunset review, not all criteria are specifically highlighted as they are applied throughout a sunset review.

Types of Regulation

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.

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review on COPRRR's website at: www.dora.colorado.gov/opr.

The functions of the Private Investigators Licensure Act (Act) as enumerated in Article 58.5 of Title 12, Colorado Revised Statutes (C.R.S.),² shall terminate on September 1, 2020, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluation of the Act pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation should be continued and to evaluate the performance of the Director of Division of Professions and Occupations (Director and Division, respectively). During this review, the Director must demonstrate that the program serves the public interest. COPRRR's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

² House Bill 19-1172 recodified this article and placed it in a new Article 160, C.R.S., effective October 1, 2019. To avoid confusion and erroneous citations and references, this sunset report consistently refers to the statutory provisions as if they remained in Article 58.5, C.R.S. (See Appendix A for a full list of changes)

Methodology

As part of this review, COPRRR staff met with Division staff, reviewed program records, interviewed officials with state and national professional associations, interviewed several private investigators, contacted consumers, reviewed Colorado statutes and rules, and reviewed the laws of other states.

Profile of the Profession

In a sunset review, COPRRR is guided by the sunset criteria located in section 24-34-104(6)(b), C.R.S. The first criterion asks whether regulation by the agency is necessary to protect the public health, safety, and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less, or the same degree of regulation.

In order to understand the need for regulation, it is first necessary to understand what the profession does, where they work, who they serve and any necessary qualifications.

An investigation is, “the act of examining something carefully, especially to discover the truth about it.”³ A private investigator is a private sector professional who, for some consideration, accepts employment to conduct an investigation.⁴

Private investigators (PI) are hired to gather information for many types of inquiries. The types of investigations encompass a wide array of subjects including legal, financial, personal information, background checks, missing person searches, and computer crimes, among others.⁵ Often an individual PI or a firm will specialize in a certain type of assignment, such as forensic accounting or security. Because of the varied subject matter and the work environment, the hours on the job can be diverse and irregular.

In evaluating the need for regulation, COPRRR also takes into consideration regulation in other states. Many states require a license to become a PI.⁶ Most PIs learn their trade through on-the-job training, which can last several months to a year. Training often depends on the type of firm where a PI is employed. Training to conduct remote surveillance, reconstruct accident scenes, or investigate insurance fraud is different from training in business practices, management structure, and various finance-related topics.⁷

³ Cambridge Dictionary. *Investigation*, Retrieved August 1, 2019, from <https://dictionary.cambridge.org/us/dictionary/english/investigation>

⁴ § 12-58.5-103(6), C.R.S.

⁵ Bureau of Labor Statistics. *Occupations Outlook Handbook: Private Detectives and Investigators*. Retrieved December 27, 2018, from <https://www.bls.gov/ooh/protective-service/private-detectives-and-investigators.htm>

⁶ Professional Private Investigators Association of Colorado. *US and State Laws*. Retrieved December 28, 2018, from <https://ppiac.org/us-and-state-laws>

⁷ Bureau of Labor Statistics. *Occupations Outlook Handbook; Private Detectives and Investigators*. Retrieved December 27, 2018, from <https://www.bls.gov/ooh/protective-service/private-detectives-and-investigators.htm#tab-4>

Multiple non-governmental, PI membership organizations require compliance to codes, offer training, and provide governmental advocacy. Included among them are:

- Professional Private Investigators Association of Colorado
 - Offers up to three training seminars per year,
 - Offers 21 hours of training per year, and
 - Provides legislative representation.⁸
- National Council of Investigations & Security Services
 - Requires adherence to a Code of Ethics,⁹
 - Cooperates with education providers and provides opportunities for education,¹⁰ and
 - Provides legislative advocacy with state and federal governments.¹¹
- National Association of Legal Investigators
 - Requires adherence to a Code of Ethics,¹² and
 - Provides educational opportunities.¹³
- World Association of Detectives
 - Requires adherence to a Code of Ethics,¹⁴ and
 - Offers educational programs and materials.¹⁵

The sixth sunset criterion requires COPRRR to evaluate the economic impact of regulation. One way this may be accomplished is to review the projected growth in the profession.

The U.S. Bureau of Labor Statistics projects that the profession will grow faster than the average considering all occupations at 11 percent from 2016 to 2026. The prediction is based upon security concerns and a need to protect confidential information.¹⁶

⁸ Professional Private Investigators Association of Colorado. *US and State Laws*. Retrieved December 28, 2018, from <https://ppiac.org/benefits>

⁹ NCISS Bylaw 3.09. National Council of Investigations & Security Services. *NCISS Bylaws*. Retrieved December 28, 2018, from <https://www.nciss.org/bylaws>

¹⁰ NCISS. *NCISS Membership Benefits*. Retrieved September 11, 2019, from <https://www.nciss.org/membership-benefits>

¹¹ Professional Private Investigators Association of Colorado. *US and State Laws*. Retrieved December 28, 2018, from <https://ppiac.org/benefits>

¹² National Association of Legal Investigators Inc. Constitution, Preamble and Article 8. National Association of Legal Investigators. *Constitution and By-Laws*. Retrieved December 28, 2018, from, <https://nalionline.org/wp-content/uploads/2017/11/Constitution-June-2017.pdf>

¹³ National Association of Legal Investigators. *NALI Mid-Winter Conference 2019*. Retrieved December 28, 2018, from <https://nalionline.org/events/mid-winter-conference-2019/>

¹⁴ By-Laws, Article XIII(1). World Association of Detectives. *By-Laws*. Retrieved December 28, 2018, from <https://www.wad.net/wad-bylaws->

¹⁵ By-Laws, Article XII(4). World Association of Detectives. *By-Laws*. Retrieved December 28, 2018, from <https://www.wad.net/wad-bylaws->

¹⁶ Bureau of Labor and Statistics. *Occupations Outlook Handbook: Private Detectives and Investigators*. Retrieved December 28, 2018, from <https://www.bls.gov/ooh/protective-service/private-detectives-and-investigators.htm>

Legal Framework

History of Regulation

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by the sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The first sunset criterion questions whether regulation by the agency is necessary to protect the public health, safety, and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less, or the same degree of regulation.

One way that COPRRR addresses this is by examining why the program was established and how it has evolved over time.

Beginning in 1887, Colorado required anyone operating a detective business to obtain a license from the Secretary of State. It was a misdemeanor to operate a detective business without procuring a license. The General Assembly repealed this licensing law in 1984.

The current regulation of private investigators in Colorado began in 2011 under the Private Investigators Voluntary Licensure Act with the ratification of House Bill 11-1195. Enactment followed several sunrise reviews conducted by the Colorado Office of Policy, Research, and Regulatory Reform. The reviews conducted in 1985, 1987, 2000, and 2006 recommended against regulation and a 2011 sunrise review suggested minimal regulation requiring surety and passing a jurisprudence examination.

During the 2014 legislative session, licensing became mandatory because the population of licensees and the associated fees under the voluntary system were not sufficient to support the program's operations. The General Assembly noted,

While the voluntary program is unsustainable, it is important to protect consumers by establishing minimum standards for and requirements for licensure of private investigators.¹⁷

The General Assembly also mandated that the mandatory program repay any deficiencies produced under the voluntary program.¹⁸

¹⁷ § 12-58.5102(3)(d), C.R.S.

¹⁸ §§ 12-58.5-102(3)(e), and (3)(f), C.R.S.

Legal Summary

The second and third sunset criteria question

Whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms, and whether agency rules enhance the public interest and are within the scope of legislative intent; and

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters.

A summary of the current statutes and rules is necessary to understanding whether regulation is set at the appropriate level and whether the current laws are impeding or enhancing the agency's ability to operate in the public interest.

Prior to October 1, 2019, the Private Investigators Licensure Act (Act) comprised Article 58.5, of Title 12, C.R.S. House Bill 19-1172 rewrote Article 58.5 and placed it in a new Article 160. The new statutes went into effect on October 1, 2019. To avoid confusion and erroneous citations and references, this sunset report consistently refers to the statutory provisions as if they remained in Article 58.5. See Appendix A for a full list of changes.

The Act assigns the Director of the Division of Professions and Occupations (Director and Division, respectively) in the Department of Regulatory Agencies, as the regulator. The Director is empowered to:¹⁹

- Promulgate rules to implement the Act, specifically establishing:
 - Procedures for obtaining a license,
 - Experience requirements for a Level II license,
 - Standards of practice,
 - Surety bond requirements, and
 - Any other rules that are necessary for carrying out the goals of regulation.
- Create and proctor or contract for examinations, and
- Establish license fees.

The Act is a mandatory practice act. It states that any individual who performs private investigations or uses the protected titles – “private investigator”, “private detective”, “licensed private detective”, or “licensed private investigator – without a license commits a class 2 misdemeanor.²⁰

¹⁹ § 12-58.5-108, C.R.S.

²⁰ § 12-58.5-104(2), C.R.S.

A private investigation is an inquiry to obtain information for others relating to:²¹

- A crime, wrongful act, or threat against the United States or any state or territory of the United States;
- The identity, reputation, character, habits, conduct, business occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movements, whereabouts, affiliations, associations, or transactions of a person, group of persons, or organization;
- The credibility of witnesses or other persons;
- The whereabouts of missing persons;
- The determination of the owners of abandoned property;
- The causes and origin of, or responsibility for, libel, slander, a loss, an accident, damage, or an injury to a person or to real or personal property;
- The business of securing evidence to be used before an investigatory committee, board of award or arbitration, administrative body, or officer or in the preparation for or in a civil or criminal trial;
- The business of locating persons who have become delinquent in their lawful debts, when the private investigator locating the debtor is hired by an individual or collection agency;
- The location or recovery of lost or stolen property;
- The affiliation, connection, or relationship of any person, firm, or corporation with any organization, society, or association or with any official, representative, or member of an organization, society, or association;
- The conduct, honesty, efficiency, loyalty, or activities of employees, persons seeking employment, agents, contractors, or subcontractors; or
- The identity of persons suspected of crimes or misdemeanors.

There are two licensure categories for private investigators (PIs), Level I and Level II. To obtain a Level I license a person must be 21 years old, be lawfully present in the U.S., pass a jurisprudence examination developed by the Director,²² and be covered by a surety bond in an amount determined by the Director.²³ The minimum amount is \$10,000.²⁴

A Level II PI must satisfy the requirements of Level I plus have verifiable experience in an amount determined by the Director.²⁵ That amount is 4,000 hours of applicable experience.²⁶ Beyond these requirements, an applicant for any license must submit to a Colorado Bureau of Investigation fingerprint-based criminal history record check.²⁷

²¹ § 12-58.5-103(5), C.R.S.

²² § 12-58.5-106(1)(a), C.R.S.

²³ § 12-58.5-107, C.R.S.

²⁴ 4 CCR 750-1, 4.A. Private Investigator Licensure Rules and Regulations.

²⁵ § 12-58.5-106(1)(b), C.R.S.

²⁶ 4 CCR 750-1, 3.B.7.

²⁷ § 12-58.5-106(2), C.R.S.

Along with the licensing of professionals, the Act empowers the Director to conduct investigations, administer disciplinary proceedings, and take disciplinary action when necessary.²⁸ The Director has a full litany of disciplinary tools at his or her disposal, including: denying, suspending or revoking a license; placing a licensee on probation, including entering into a stipulation;²⁹ issuing a letter of admonition;³⁰ and issuing a fine of not more than \$3,000 per violation.³¹

The Director may begin a disciplinary proceeding if it is “reasonable” to believe that a licensee has violated the Act,³² including any rule.³³ The Director may issue a cease and desist order if it is believed that a licensee presents an imminent threat to the health and safety of the public or if a person is practicing without a license.³⁴ A person aggrieved by a cease and desist order may seek judicial review of the Director’s final order.³⁵ Alternatively, the Director may issue a show cause order inquiring why a licensee should not be disciplined for a violation.³⁶ In such cases, any hearing must be conducted according to the Administrative Procedure Act.

Specific violations enumerated in the Act encompass being guilty of, pleading no contest to, or failing to report a felony or criminal conviction concerning unlawful sexual behavior, domestic violence, stalking, and violating a protection order.³⁷

Noncriminal-based violations include:³⁸

- Advertising as a licensed private investigator without holding an active license;
- Having been disciplined as a private investigator in another jurisdiction;
 - Evidence of disciplinary action in another jurisdiction is *prima facie* evidence for discipline by the Director if the violation would be grounds for disciplinary action in Colorado.
- Committing an act or omission that fails to meet generally accepted standards of the practice of private investigations; and
- Failing to fulfill the surety bond requirements of the Act.

A licensee whose license has been revoked or surrendered to avoid discipline is ineligible to apply for a license for two years after the date of revocation or surrender. Any subsequent application will be treated as a new license application.³⁹

²⁸ § 12-58.5-109, C.R.S.

²⁹ §§ 12-58.5-109(1), and 109(12), C.R.S.

³⁰ §§ 12-58.8-109(1), and 109(15), C.R.S.

³¹ § 12-58.5-109(2), C.R.S.

³² § 12-58.5-109(4)(a), C.R.S.

³³ § 12-58.5-109(1)(a), C.R.S.

³⁴ § 12-58.5-109(10)(a), C.R.S.

³⁵ § 12-58.5-109(14), C.R.S.

³⁶ § 12-58.5-109(11), C.R.S.

³⁷ §§ 12-58.5-109(1)(c), and 109(1)(d), C.R.S.

³⁸ §§ 12-58.5-109(1)(e), 109(1)(f), 109(1)(g), and 109(1)(h), C.R.S.

³⁹ § 12-58.5-110, C.R.S.

The Act exempts several types of professionals, employees, and contractors from mandatory licensing, including:⁴⁰

- A collection agency or consumer reporting agency;
- A person investigating on their own behalf;
- A person investigating on the behalf of an employer;
- A licensed attorney;
- An attorney's employee or paralegal;
- A law enforcement officer;
- A certified public accountant or their employee;
- An employee or affiliate of an accounting firm;
- A person who conducts forensic accounting, fraud investigations, or other related analysis of financial transactions;
- A certified fraud examiner;
- An employee or independent contractor under the guidance of an accountant, public accountant, or certified fraud examiner;
- A person who aggregates public records and charges a fee for access;
- A person employed by an insurance company conducting claims adjustments or investigations;
- A government employee;
- A person contracted by a public or governmental agency;
- A journalist or genealogist;
- A process server;
- A licensed bail agent;
- A licensed bail agent's contractor or agent;
- An owner, employee, or independent contractor of an agency conducting an investigation of a fire or explosion;
- An engineer or an owner, employee, or independent contractor of an engineering firm conducting cause analysis or failure analysis; and
- Any person licensed under Title 12, C.R.S., who is acting within the scope of his or her practice.

⁴⁰ § 12-58.5-105, C.R.S.

Program Description and Administration

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The third, fourth and fifth sunset criteria question:

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters;

Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively; and

Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates.

In part, COPRRR utilizes this section of the report to evaluate the agency according to these criteria.

The Director of the Department of Regulatory Agencies' Division of Professions and Occupations (Director and Division, respectively) is empowered by the Private Investigators Licensure Act (Act) to regulate private investigators. The Act requires that every private investigator in Colorado be licensed.

The program established to implement the Act is cash-funded through license fees. Table 1 reports the program's budgetary information for the period examined for this sunset review.

Table 1
Program Expenditures
Fiscal Years 13-14 through 17-18

Fiscal Year	Total Program Expenditure	FTE
13-14*	\$34,672.26	0.35
14-15	\$74,425.23	0.60
15-16	\$80,887.52	0.60
16-17	\$75,171.87	0.60
17-18	\$74,003.43	0.60

*Licensing was voluntary during fiscal year 13-14

The full-time equivalent (FTE) employees listed do not include employees in the centralized offices of the Division which provide management, licensing, administrative, technical, and investigative support. However, the cost of those FTE is

reflected in the Total Program Expenditures. Even though only 60 percent of one FTE is dedicated to program operations, that 60 percent is split among four positions as follows:

- Program Management II - 0.10 FTE
 - Responsible for overall management, complaint resolution, stakeholder engagement, case summary review, and application review and approval.
- Technician III - 0.20 FTE
 - Responsible for practice monitoring, compliance, case management, statute and rule review, and case summary preparation.
- Administrative Assistant III - 0.10 FTE
 - Responsible for complaint intake, case management, case summary preparation, case research, and application review and approval.
- Administrator III - 0.20 FTE
 - Responsible for case management, case correspondence, case summary preparation, case summary review, and case research.

Table 1 also shows that since the mandatory licensing regime was established in fiscal year 14-15, neither monetary nor personnel expenditures has varied much. In fact, with the exception of a slight increase in fiscal year 15-16, all expenditures have stayed remarkably steady.

Licensing

The eighth sunset criterion questions whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

There are two levels of private investigator (PI) license issued under the Act, Level I and Level II. There are no duties that a Level II licensee may perform that a Level I licensee may not perform.

Level I

To acquire a license as a Level I PI, an applicant must satisfy the following requirements:⁴¹

- Attest that he or she is 21 years old,
- Attest to and provide information that he or she is lawfully present in the United States or otherwise eligible to work in Colorado,

⁴¹ DORA. *Private Investigator (PI) Online Application Checklist - Levels 1&2*. Retrieved April 30, 2019, from <https://drive.google.com/file/d/14SzvP8PW2lTlsgAHcycF8CMHQqaENs2X/view>

- Submit fingerprints to the Colorado Bureau of Investigation for a state and national background check,
- Pass an online jurisprudence examination,
- Submit a social security number or a signed Social Security Number Affidavit,
- Answer a series of screening questions,
- Confirm the he or she will post and maintain a \$10,000 surety bond prior to practicing in Colorado, and
- Submit a fee.
 - The license fee was \$330 as of April 2019.

All PI licenses expire on May 31 each year.⁴²

Table 2 lists the number of Level I licenses issued during the fiscal years examined for this sunset review.

Table 2
PI Level I
Licenses Issued
Fiscal Years 13-14 through 17-18

Fiscal Year	Original	Renewal	Reinstatement	Active Licenses**
13-14*	8	32	1	80
14-15	98	0	0	98
15-16	115	113	0	212
16-17	129	163	2	234
17-18	134	254	3	370

*Licensing was voluntary during fiscal year 13-14.

**Active licenses are counted as of June 30th, the end of the state fiscal year.

The number of licenses issued increased dramatically during two of the fiscal years enumerated, fiscal years 15-16 (116.3 percent) and 17-18 (58.1 percent). Staff explained that the fiscal year 15-16 increase was due to the imposition of mandatory licensing. There was no obvious reason for the increase in fiscal year 17-18. Additionally, the number of active licenses at the end of the fiscal year does not always match the number of renewals in the next fiscal year. This is likely due to a grace period given to new licensees who become licensed at the end of a license year. If a person acquires a license within the grace period, he or she is granted a license for the following year.

⁴² *Ibid.*

Level II

To acquire a Level II PI license, an applicant must complete all of the requirements of Level I and obtain 4,000 hours of applicable experience.⁴³ As stated above, there are no duties that a Level II PI may perform that a Level I PI may not perform. The sole difference between the levels is that a Level II License requires the applicant/licensee to complete those 4,000 hours.

Table 3 lists the number of Level II licenses issued during the fiscal years examined for this sunset review.

Table 3
PI Level II
Licenses Issued
Fiscal Years 13-14 through 17-18

Fiscal Year	Original	Renewal	Reinstatement	Active Licenses**
13-14*	Not Applicable	Not Applicable	Not Applicable	Not Applicable
14-15	296	0	0	296
15-16	130	322	0	423
16-17	77	369	6	403
17-18	99	440	4	515

*During fiscal year 13-14, licensing was voluntary and a Level II License was not offered.

**Active licenses are counted as of June 30th, the end of the state fiscal year.

Table 3 indicates that the number of active licenses grew 74 percent during the time examined for this sunset review.

Examinations

To obtain a license, the Act requires that each person,

Demonstrate knowledge and understanding of the laws and rules affecting the ethics and activities of private investigators in this state by passing a jurisprudence examination developed and approved by the Director.⁴⁴

The cost of the 45-question online jurisprudence examination is \$25 per attempt. It is an open book test in which the license candidate has 30 days, from the time the examination fee is paid, to complete. There is no limit regarding the number of times an individual may take the examination.

⁴³ 4 CCR 750-1 § 3(b)(7), Private Investigator Licensure Rules and Regulations.

⁴⁴ § 12-58.5-106(1)(a)(III), C.R.S.

The examination is divided into four areas:⁴⁵

- General Laws, Rules and Regulations, encompass 27 percent of the questions;
- Standards of Practice, encompass 42 percent of the questions;
- Grounds for Discipline, encompass 15 percent of the questions; and
- Disciplinary Provisions/Procedure, encompass 16 percent of the questions.

The purpose of a jurisprudence examination is to ensure that each licensee understands what is legally expected as a practitioner and it is therefore only required of Level I applicants. The difference between a jurisprudence examination and a license examination is that a license examination will typically test for competency.

Table 4 displays examination data for the fiscal years examined for this sunset review.

Table 4
Examination Information
Fiscal Years 13-14 through 17-18

Fiscal Year	Number of Examinations Given	Passing Percentage
13-14*	Not Applicable	Not Applicable
14-15	545	81
15-16	369	70
16-17	365	72
17-18	363	70

* During fiscal year 13-14 licensing was voluntary and an examination was not offered.

The examination became a mandatory element of licensing on March 1, 2015. After the initial rush to license, the number of tests taken leveled off at a pointedly lower number, approximately 366 per fiscal year. The reason the number of examinations given does not match the number of new licenses is that some of the licensees must take the examination multiple times to pass. For example, in fiscal year 17-18 there were 363 examinations given and only 134 original licenses issued.

Complaint and Disciplinary Activity

The seventh sunset criterion requires COPRRR to examine whether complaint, investigation, and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession.

⁴⁵ *ibid.*

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

The “Legal Framework” section of this sunset report recounts that there are both criminal and noncriminal activities that are violations of the Act. When a complaint comes into the Division it is reviewed for jurisdiction. If, indeed, the Director has jurisdiction over the complaint, it is investigated to determine if a violation occurred. If a more robust investigation is required, the complaint is forwarded to the Division’s Office of Investigations (OI) before the Director renders a decision.

Table 5 notes the complaints the Division received concerning PIs during the fiscal years examined for this sunset review. Complaint data include complaints received from the public, those that are generated by the Division, and those over which the Director has no jurisdiction.

Table 5
PI Complaints
Fiscal Years 13-14 through 17-18

Fiscal Year	Complaints Received and Handled
13-14*	0
14-15	4
15-16	9
16-17	19
17-18	22

*Fiscal year 13-14 was the first year that mandatory PI licensing was in effect.

Table 5 illustrates that as more people became licensed and more people became aware of mandatory licensing, the number of complaints received by the Division increased. Table 6 indicates that the majority of complaints, 72.7 percent, received during fiscal year 15-16, the first full year of licensing, concerned practicing without a license. Additionally, the totals do not align with the complaint data above for multiple reasons. A single complaint may contain multiple allegations, result in other possible infractions based on investigation, may not have been opened and closed in the same year, or other such statistical artifacts.

Table 6 does not break out the complaints by license level because, from a regulatory perspective, there is no difference between how a Level I and Level II PIs must perform on the job. Both levels must adhere to the same standards and scope of practice.

Table 6
Nature of Complaints
Fiscal Years 13-14 through 17-18

	FY13-14*	FY14-15	FY15-16	FY16-17	FY17-18
Practicing without a license	Not Applicable	1	16	7	7
Standard of Practice	Not Applicable	0	6	15	13
Scope of Practice	Not Applicable	0	0	0	0
Sexual Misconduct	Not Applicable	0	0	0	0
Substance Abuse	Not Applicable	0	0	0	0
Felony Conviction	Not Applicable	4	0	3	17
Total		5	22	25	37

*Mandatory licensure for PIs went into effect on June 1, 2015.

Table 6 also indicates that most complaints fall into three categories: practicing without a license, standards of practice, and having a felony conviction.

Standards of practice violations generally relate to business practices, including:⁴⁶

- Contracts,
- Conflicts of interest,
- Confidentiality,
- Recordkeeping,
- Advertising,
- Business standards and compliance with laws, and
- Other generally accepted standards of practice.

Table 7 enumerates the actions taken on the complaints. As stated above, totals may not track with other complaint data because a single complaint may result in other possible infractions, a complaint may not have been opened and closed in the same year, among other possibilities.

⁴⁶ 4 CCR 750-1 § 8, Private Investigator Licensure Rules and Regulations.

Table 7
Final Agency Actions
Fiscal Years 13-14 through 17-18

Type of Action	FY13-14	FY14-15	FY15-16	FY16-17	FY17-18
Revocations	0	0	0	0	0
Suspensions	0	0	0	0	0
Stipulations	0	3	1	2	0
Letters of Admonition	0	1	0	1	0
Total Disciplinary Actions	0	4	1	3	0
Dismissals	2	0	9	13	15
Letters of Concern	0	0	0	11	8
Total Dismissals	2	0	9	24	23

The data in Table 7 show that most complaints are dismissed and that given the size of the licensed population, it is rare that a licensee violates the conditions of the license. Since licensing became mandatory only eight disciplinary actions have been taken. Six of those actions were stipulations because of incidents that occurred prior to being licensed. Of the remaining three actions, two were dispensed to one individual who continues to hold a license. During fiscal years 16-17 and 17-18, 40.4 percent of the dismissals were accompanied by a confidential letter of concern. When the Director dismisses a complaint but notes conduct that certain actions, if left unchanged, could lead to a possible violation, he or she may send a confidential letter of concern to the licensee with the dismissal. In addition to the actions taken above, there was one \$250 fine imposed during fiscal year 16-17 in connection with the letter of admonition.

Collateral Consequences - Criminal Convictions

The ninth sunset criterion requires COPRRR to examine whether the agency under review, through its licensing processes, imposes any sanctions or disqualifications based on past criminal history, and if so, whether the disqualifications serve public safety or commercial or consumer protection interests.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

The Act provides that a licensee may be disciplined for a conviction, or a plea of guilty or *nolo contendere* to a felony or an offense concerning unlawful sexual behavior, domestic violence, stalking, or a violation of a protection order.⁴⁷

⁴⁷ § 12-58.5-109(1)(c), C.R.S.

The Division reported that no licenses were denied based on criminal history. However, in five cases, individuals were issued conditional licenses. A conditional license was issued three times in fiscal year 14-15 (for arrests prior to applying for a license), the first year of mandatory licensing, and one each in fiscal years 15-16 (for harassment) and 16-17 (for arrests prior to applying for a license) .

Analysis and Recommendations

The final sunset criterion questions whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest. The recommendation that follows is offered in consideration of this criterion, in general, and any criteria specifically referenced therein.

Recommendation 1 - Sunset the Private Investigators Licensure Act.

As this report recounts, the Colorado Office of Policy, Research, and Regulatory Reform (COPRRR) performed five sunrise reviews of private investigators (PIs), in 1985, 1987, 2000, 2006, and 2011 . The first four of those reviews recommended no regulation and the fifth gave a tepid endorsement for minimal regulation. The final sunrise review noted that while harm to consumers was neither common nor caused by practitioner incompetence, it spoke to a possibility of financial harm.

The primary questions that the General Assembly must consider when deciding to reauthorize a program under sunset review are whether regulation is necessary to protect public health, safety, and welfare and if the environment that led to regulation has changed.

What has changed since initial regulation? Now there are data. The data verify that while prior to licensing there may have been a slight chance that the public could be financially harmed by not regulating PIs, the harm does not occur. Table 2, Table 3, and Table 7 of this sunset review, illustrate that while the number of licenses issued to PIs has increased from zero to nearly 900 during the time licensing has existed, disciplinary actions against licensed individuals are virtually nonexistent. When discipline has been taken, the infractions have not been directly associated with the harming of a consumer.

COPRRR examined the complaint and disciplinary files regarding PIs. The complaints clearly illustrate that it is rare that a PI acts in a nefarious manner. Since licensing became mandatory on June 1, 2015, there have been 77 complaint files opened and only eight disciplinary actions taken against licensees. Of those eight actions, six were conditional licenses (stipulations) issued to individuals because of their behavior prior to being licensed, not after they were licensed. This means that the Director of the Division of Professions and Occupations believed the applicants' conduct prior to being licensed was not egregious enough to deny a license. The licenses that were issued contained provisions that they would be revoked if a licensee acted improperly. Subsequently none were revoked.

Of the remaining three disciplinary actions, two were dispensed to one individual who was issued a letter of admonition as well as a practice stipulation for harassment.

This case was from 2015 and there is no subsequent record that the individual acted outside of the conditions for licensure.

The final action was a letter of admonition dispensed to a PI for practicing with an expired license. The PI resided in Texas and held a Colorado license.

The file information points out that in the entire history of the program, no license has ever been suspended or revoked. One could legitimately infer that the lack of action illustrates that a PI has not posed more than a nominal threat to the public interest.

In addition to examining case files, COPRRR also contacted the Office of the Colorado Attorney General. It reported that a PI has not been identified as a potential investigative target.

The argument most often used to illustrate that the public could be harmed by unlicensed PIs is that PIs have access to sensitive personal information and should be licensed to ensure they have been vetted. COPRRR contacted several organizations that aggregate data. Data they acquire are used for various reasons by journalists (who are unlicensed), bail bond agents (who are licensed), process servers (who are unlicensed), attorneys (who are licensed), and government employees in several capacities (who are unlicensed), among others. The data range from publicly accessible information to personal information and access is often regulated by various entities including local, state, and federal governments. For example, the federal Consumer Financial Protection Bureau regulates who may access certain financial records.

That someone should be vetted to acquire certain information is reasonable. The most sensitive data are accessible to only those individuals that have been deemed qualified (vetted) by the owner and the regulator of the data, i.e., the database operator. As one information source articulated to COPRRR, it does not make a difference if a person holds one license or 20 licenses, access to their data requires that a person satisfies their protocols. Therefore, having a Colorado-issued license does not automatically allow access to sensitive information. Satisfying the data owner's protocols and any aforementioned governmental standards is what matters. The protocols are generally less stringent for publicly accessible data and very rigorous for sensitive data.

COPRRR also contacted the Colorado Bureau of Investigation-Identity Theft/Cybercrimes Unit (CBI) inquiring about how often, and the number of complaints received regarding PIs committing identity theft. CBI responded that no complaints have been received involving a PI.

Attorneys and insurance companies represent a large portion of the PI consumer base. COPRRR contacted industry organizations for input on PI licensing. There was very little response to the inquiries. Those who did respond opined that there should be

some PI training and standards in place. Again, the reasoning was due to the sensitive nature of the information PIs obtain and the confidence the consumer gains from hiring licensed individuals.

This sunset review recounted that multiple non-governmental, membership organizations promulgate standards and require compliance with the standards without a government mandate.

COPRRR did receive letters from individual attorneys endorsing licensure. However, those letters did not chronicle any harm that consumers had experienced from PIs. Rather, they addressed the confidence the attorney's obtain from hiring licensed individuals.

Because PIs are currently regulated, this sunset review must consider what the environment would look like without continued regulation. How is, or could, the public be harmed without regulation?

The following is a list all of the exemptions to licensing included in the Private Investigators Licensure Act (Act). If a person is performing an investigation in any of these circumstances, then he or she does not need to be a licensed PI. Section 12-58.5-105(1), Colorado Revised Statutes (C.R.S.) exempts:

(a) A collection agency or consumer reporting agency, as defined in sections 5-16-103(3) and (6), C.R.S., respectively;

(b) A person conducting an investigation on the person's own behalf, or an employee of an employer conducting an internal investigation on behalf of his or her employer;

(c) An attorney licensed to practice law in this state, an employee of a licensed attorney, or a person under contract to perform paralegal services for a licensed attorney;

(d) A certified peace officer of a law enforcement agency operating in his or her official capacity;

(e)(I) A certified public accountant certified or authorized to provide accounting services in the state pursuant to Article 2 of Title 12, C.R.S.;

(II) An employee of a certified public accountant;

(III) An employee or affiliate of an accounting firm registered pursuant to section 12-2-117, C.R.S.; or

(IV) A person who conducts forensic accounting, fraud investigations, or other related analysis of financial transactions based on information that

is either publicly available or provided by clients or other third parties and who is:

(A) An accountant or public accountant who is not regulated by the state;

(B) A certified fraud examiner; or

(C) An employee or independent contractor under the guidance of an accountant, public accountant, or certified fraud examiner;

(f) A person who aggregates public records and charges a fee for accessing the aggregated public records data;

(g) A person employed by an insurance company who is conducting claims adjustment or claims investigation for the purposes of an insurance claim;

(h) An investigator employed or contracted by a public or governmental agency;

(i) A journalist or genealogist;

(j) A person serving process within the state, performing his or her duties in compliance with the Colorado or federal rules of civil procedure or in accordance with applicable foreign state court rules or laws pertaining to service of foreign process within this state, or performing any task associated with effecting service of process, all of which includes inquiries related to effecting proper service of process and resulting supporting proofs, declarations, affidavits of service, or declarations or affidavits of due diligence to support alternative methods of service of process; except that a process server who performs private investigations outside the efforts to effect service of process is not exempt from the licensing requirements of this article and must obtain a license under this article in order to lawfully perform those private investigations;

(k) A person attempting to recover a fugitive when that person furnished bail and is licensed under Article 2 or 23 of Title 10, C.R.S., or is acting pursuant to a contract with or at the request of a person who furnished bail;

(l) An owner, employee, or independent contractor of an agency conducting an investigation to determine the origin and cause of a fire or explosion;

(m) An owner, employee, or independent contractor of an agency conducting an investigation for cause analysis or failure analysis where the investigation is conducted by an engineer licensed pursuant to Part 1 of

Article 25, Title 12, C.R.S., acting within his or her area of expertise and within the scope of the practice of engineering; or

(n) Any other person licensed under [Title 12] who is practicing within the scope of his or her practice as defined in [Title 12].

This last section, section 12-58.5-105(1)(n), C.R.S., is particularly salient. If a person holds any professional license issued under Title 12, C.R.S., then that person, while acting as a licensed practitioner, is exempt from regulation under the Act.

Because of the lack of disciplinary actions taken against licensees and the sheer breadth and scope of the exemptions to licensing, it is reasonable to conclude that the environment would not look too different if PI licensing were to sunset.

The sunset review statutes direct that sunset analysis consider if a law under review establishes the least restrictive form of regulation consistent with the public interest⁴⁸ and whether the agency/program stimulates or restricts competition.⁴⁹ Licensing PIs clearly restricts what is left of the marketplace. Given the lack of demonstrable harm, this restriction is unnecessary.

Another reason touted by proponents of PI regulation is that PI licensing guarantees a high degree of professionalism. They claim that many PIs with substantial criminal histories stopped working as investigators because of licensing. This may be true, but program data do not bear it out. There have been no licenses denied based on criminal history and only five conditional licenses issued because of it. Furthermore, it is not the purpose of regulation or the sunset review process to guarantee professionalism. While professionalism may be a compelling standard for professionals in the public marketplace, it is a far different, and weaker, standard than the public protection standard the General Assembly must consider in a sunset review. Regardless of whether an individual is licensed, every private investigator must obey all applicable laws concerning privacy, ethics, fraud, as well as any other pertinent law.

Consequently, because the public interest is not protected from clear, understandable harm by the licensing of PIs, the General Assembly should sunset the Act.

⁴⁸ § 24-34-104(6)(b)(II). C.R.S.

⁴⁹ § 24-34-104(6)(b)(VI). C.R.S.

Appendix A - Title 12 Recodification Table

This table shows provisions of Article 58.5 of Title 12 of the Colorado Revised Statutes that were relocated as a result of the passage of House Bill 19-1172, concerning an organizational recodification of Title 12.

Prior to October 1, 2019	October 1, 2019 and Thereafter	Prior to October 1, 2019	October 1, 2019 and Thereafter
12-58.5-101	12-160-101	12-58.5-105(1)(l)	12-160-106(1)(l)
12-58.5-102	12-160-102	12-58.5-105(1)(m)	12-160-106(1)(m)
12-58.5-102(1) IP	12-160-102(1) IP	12-58.5-105(1)(n)	12-160-106(1)(n)
12-58.5-102(1)(a)	12-160-102(1)(a)	12-58.5-106	12-160-107
12-58.5-102(1)(b)	12-160-102(1)(b)	12-58.5-106 IP(1)	12-160-107 IP(1)
12-58.5-102(1)(c)	12-160-102(1)(c)	12-58.5-106 IP(1)(a)	12-160-107 IP(1)(a)
12-58.5-102(1)(d)	12-160-102(1)(d)	12-58.5-106(1)(a)(I)	12-160-107(1)(a)(I)
12-58.5-102(1)(e)	12-160-102(1)(e)	12-58.5-106(1)(a)(II)	12-160-107(1)(a)(II)
12-58.5-102(2)	12-160-102(2)	12-58.5-106(1)(a)(III)	12-160-107(1)(a)(III)
12-58.5-102 IP(3)	12-160-102 IP(3)	12-58.5-106 IP(1)(b)	12-160-107 IP(1)(b)
12-58.5-102(3)(a)	12-160-102(3)(a)	12-58.5-106(1)(b)(I)	12-160-107(1)(b)(I)
12-58.5-102(3)(b)	12-160-102(3)(b)	12-58.5-106(1)(b)(II)	12-160-107(1)(b)(II)
12-58.5-102(3)(c)	12-160-102(3)(c)	12-58.5-106(2)	12-160-107(2)
12-58.5-102(3)(d)	12-160-102(3)(d)	12-58.5-106(3)	12-160-107(3)
12-58.5-102(3)(e)	12-160-102(3)(e)	12-58.5-107	12-160-108
12-58.5-102(3)(f)	12-160-102(3)(f)	12-58.5-108	12-160-109
12-58.5-103 IP	12-160-104 IP	12-58.5-108 IP(1)	12-160-109 IP(1)
12-58.5-103(1) to (3)	Repealed	12-58.5-108(1)(a)	12-160-109(1)(a)
12-58.5-103(4)	12-160-104(1)	12-58.5-108(1)(b)	12-160-109(1)(b)
12-58.5-103 IP(5)	12-160-104 IP(2)	12-58.5-108(1)(c)	12-160-109(1)(c)
12-58.5-103(5)(a)	12-160-104(2)(a)	12-58.5-108 IP(2)	12-160-109 IP(2)
12-58.5-103(5)(b)	12-160-104(2)(b)	12-58.5-108 IP(2)(a)	12-160-109 IP(2)(a)
12-58.5-103(5)(c)	12-160-104(2)(c)	12-58.5-108(2)(a)(I)	12-160-109(2)(a)(I)
12-58.5-103(5)(d)	12-160-104(2)(d)	12-58.5-108(2)(a)(II)	12-160-109(2)(a)(II)
12-58.5-103(5)(e)	12-160-104(2)(e)	12-58.5-108(2)(a)(III)	12-160-109(2)(a)(III)
12-58.5-103(5)(f)	12-160-104(2)(f)	12-58.5-108(2)(a)(IV)	12-160-109(2)(a)(IV)
12-58.5-103(5)(g)	12-160-104(2)(g)	12-58.5-108(2)(a)(V)	12-160-109(2)(a)(V)
12-58.5-103(5)(h)	12-160-104(2)(h)	12-58.5-108(2)(b)	12-160-109(2)(b)
12-58.5-103(5)(i)	12-160-104(2)(i)	12-58.5-108(2)(c)	12-160-109(2)(c)
12-58.5-103(5)(j)	12-160-104(2)(j)	12-58.5-108(2)(d)	12-160-109(2)(d)
12-58.5-103(5)(k)	12-160-104(2)(k)	12-58.5-109	12-160-110
12-58.5-103(5)(l)	12-160-104(2)(l)	12-58.5-109 IP(1)	12-160-110 IP(1)
12-58.5-103(6)	12-160-104(3)	12-58.5-109(1)(a)	12-160-110(1)(a)
12-58.5-104	12-160-105	12-58.5-109(1)(b)	12-160-110(1)(b)
12-58.5-104(1)(a)	12-160-105(1)(a)	12-58.5-109(1)(c)	12-160-110(1)(c)
12-58.5-104(1)(b)	12-160-105(1)(b)	12-58.5-109(1)(d)	12-160-110(1)(d)
12-58.5-104(2)	12-20-407 IP(1)(b)	12-58.5-109(1)(e)	12-160-110(1)(e)

Prior to October 1, 2019	October 1, 2019 and Thereafter	Prior to October 1, 2019	October 1, 2019 and Thereafter
12-58.5-105	12-160-106	12-58.5-109(1)(f)	12-160-110(1)(f)
12-58.5-105 IP(1)	12-160-106 IP(1)	12-58.5-109(1)(g)	12-160-110(1)(g)
12-58.5-105(1)(a)	12-160-106(1)(a)	12-58.5-109(1)(h)	12-160-110(1)(h)
12-58.5-105(1)(b)	12-160-106(1)(b)	12-58.5-109(2)	12-160-110(2)
12-58.5-105(1)(c)	12-160-106(1)(c)	12-58.5-109(3)	12-160-110(3)
12-58.5-105(1)(d)	12-160-106(1)(d)	12-58.5-109(4)(a)	12-160-110(4)(a)
12-58.5-105(1)(e)(I)	12-160-106(1)(e)(I)	12-58.5-109(4)(b)	12-160-110(4)(b)
12-58.5-105(1)(e)(II)	12-160-106(1)(e)(II)	12-58.5-109(5)	12-160-110(5)
12-58.5-105(1)(e)(III)	12-160-106(1)(e)(III)	12-58.5-109(6)(a)	12-160-110(6)
12-58.5-105 IP(1)(e)(IV)	12-160-106 IP(1)(e)(IV)	12-58.5-109(6)(b) to (7)(b)	Repealed
12-58.5-105(1)(e)(IV)(A)	12-160-106(1)(e)(IV)(A)	12-58.5-109(8)	12-160-110(7)
12-58.5-105(1)(e)(IV)(B)	12-160-106(1)(e)(IV)(B)	12-58.5-109(9)	Repealed
12-58.5-105(1)(e)(IV)(C)	12-160-106(1)(e)(IV)(C)	12-58.5-109(10)(a)	12-160-110(8)
12-58.5-105(1)(f)	12-160-106(1)(f)	12-58.5-109(10)(b) to (14)	Repealed
12-58.5-105(1)(g)	12-160-106(1)(g)	12-58.5-109(15)(a)	12-160-110(9)
12-58.5-105(1)(h)	12-160-106(1)(h)	12-58.5-109(15)(b), (15)(c)	Repealed
12-58.5-105(1)(i)	12-160-106(1)(i)	12-58.5-109(16)	12-160-110(10)
12-58.5-105(1)(j)	12-160-106(1)(j)	12-58.5-110 and 111	Repealed
12-58.5-105(1)(k)	12-160-106(1)(k)	12-58.5-112	12-160-111