

COLORADO DEPARTMENT OF REGULATORY AGENCIES
OFFICE OF POLICY AND RESEARCH

PRIVATE INVESTIGATORS

2000 SUNRISE REVIEW



October 15, 2000

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 Department of Regulatory Agencies has completed the evaluation of the sunrise application for licensure of private investigators. I am pleased to submit this written report which will be the basis for my office's oral testimony before the 2001 Legislative Committees of Reference. The report is submitted pursuant to section 24-34-104.1, Colorado Revised Statutes, 1988 Repl. Vol., (the "Sunrise Act") which provides that the Department of Regulatory Agencies 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,

M. Michael Cooke
Executive Director

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Colorado's Sunrise Process and Criteria

The Department of Regulatory Agencies (DORA) has completed its review of the sunrise application¹ submitted by the Professional Private Investigators Association of Colorado (PPIAC). The Association seeks licensure for private investigators, known also as private detectives. According to the applicant, the size of the occupational group in Colorado consists of approximately 250 private investigators/detective agencies.

Pursuant to the Colorado Sunrise Act, the applicant must establish the need for regulation according to the following criteria:

- 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.
- Whether the public needs, and can be reasonably expected to benefit from, an assurance of initial and continuing professional or occupational competence; and
- Whether the public can be adequately protected by other means in a more cost-effective manner.²

In addition to this 2000 review, sunrise applications were submitted by the Professional Private Investigators Association of Colorado in 1985 and 1987. Past reviews did not result in the regulation of private investigators in Colorado.

¹ In the form of a questionnaire consisting of twenty-three questions, dated 06/21/99.

² §24-34-104.1, C.R.S.

Overview of the Private Investigator Occupation

Private investigators assist attorneys, businesses, and members of the public. Their services include protecting businesses and their employees, customers, and guests from theft or vandalism, as well as gathering evidence for trials, tracing debtors, or conducting background investigations.³

Private investigator tasks range from locating missing persons to exposing fraudulent workers' compensation claims. Some specialize in one field, such as finance, where they might use accounting skills to investigate the financial standing of a company or locate stolen funds. Some specialize in locating missing persons, investigating marital infidelity, or conducting background investigations, including financial profiles and asset searches; others do executive protection and bodyguard work. Private detectives who work for retail stores or malls are responsible for loss control and asset protection.

Training and Qualifications

There are no formal education requirements for most private investigator jobs, although many individuals have college degrees. Almost all private investigators have previous experience in other occupations. Some begin their careers at insurance or collections companies, or in the security industry. Many investigators enter the field after serving in military or law enforcement jobs.

Computers allow detectives and investigators to obtain massive amounts of information in a short period of time from the dozens of online data bases containing probate records, motor-vehicle registrations, credit reports, association membership lists, and other information.

³ See <http://stats.bls.gov/oco/ocos157.htm>

Federal and Other States' Regulation

Federal Regulation

There are no federal regulations that directly address private investigators. The applicant, however, notes that "the Driver's Privacy Protection Act of 1994 restricts the release and use of certain personal information from state motor vehicle records."⁴ A state department of motor vehicles is prohibited from disclosing personal information obtained in connection with a motor vehicle record. Several exceptions are delimited, however, including one for detective agencies. The relevant portion⁵ of the Act provides for the use of personal information in the normal course of business by "any licensed private investigative agency or licensed security service for any purpose permitted under this subsection." Recently, however, the 4th U.S. Circuit Court of Appeals found the Act to be unconstitutional.⁶ Subsequently, President Clinton signed into law in 1998 privacy restrictions based on Congress' authority over spending, applying the ban to any state that receives federal transportation funds.⁷

The applicant also notes in the sunrise application that the Fair Credit Reporting Act impacts private investigators. In general, a person may not procure or cause to be prepared an investigative consumer report on any consumer unless it is clearly and accurately communicated to the consumer that an investigative consumer report may be made. Consumers then have the option of requesting a written, complete and accurate disclosure of the nature and scope of the investigation originally requested.⁸

Other States' Regulation

The majority of the states and the District of Columbia require private detectives and investigators to be licensed by the state or local authorities. Licensing requirements vary widely. Some states have few requirements, and five states—Colorado, Alaska, Idaho, Mississippi, and South Dakota—have no licensing requirements. On the other hand, some states have stringent regulations. For example, the California Department of Consumer Affairs, Bureau of Security and Investigative Services, requires private investigators to be eighteen years of age or

⁴ Sunrise Application, p. 7.

⁵ (B)(8).

⁶ No. 97-2554.

⁷ Associated Press, November 10, 1999.

⁸ Section 606 of the Act.

older; have a combination of education in policing, or criminal justice, and experience equaling three years (6,000 hours) of investigative experience; pass an evaluation by the Department of Justice and a criminal history background check; and receive a qualifying score on a two-hour written examination covering laws and regulations. There are additional requirements for a firearms permit. A growing number of states are enacting mandatory training programs for private investigators. In most states, convicted felons cannot receive a license.⁹

According to the Professional and Occupational Licensing Directory, 34 states and the District of Columbia regulate private investigators. Of these, six states¹⁰ require that detective agencies be licensed and that individuals employed or operating these businesses be either licensed, certified, or registered as private investigators. Pennsylvania is the one state that requires only detective agencies to be licensed. A common entry requirement for prospective private investigators is the absence of felony convictions, and the posting of a surety bond, or proof of liability insurance coverage.

To evaluate private investigator regulation in other states, the applicant submitted for our consideration a document titled *National Laws and Statutes for Private Investigators and Security Guard Agencies (Revised Edition, 1997)*. In addition to this document, the applicant brought to our attention the state of Oregon as one of the most recent examples of regulation of private investigators.

As of 1997, Oregon requires private investigators to be licensed and operatives to be registered. Operatives are individuals who are under the direct supervision of licensees or attorneys. The entry requirements for both groups are similar, except that private investigators need to have one year of investigatory experience or related coursework, which may be substituted for up to six months of the minimum experience. There are no experience requirements for operatives. In addition to good character, both types of applicants must pass a professional investigative ethics test.

⁹ <http://stats.bls.gov/oco/ocos157.htm>

¹⁰ Arkansas, Florida, Maryland, Massachusetts, Virginia, and Wisconsin.

Proof of a corporate surety bond or irrevocable letter of credit in the amount of \$5,000 is also required. Private investigators and operatives must carry identification cards issued by the Oregon Board of Investigators. Clients of private investigators have the right to receive a written contract. The contract is to specify clearly the task to be performed and the rate of payment. Clients are also entitled to a verbal or written report within seven days of a written request for such a report.

Regulation of Private Detectives in Colorado

Historical Overview

Colorado's first private investigator licensure law was enacted in 1887, but declared unconstitutional by the Colorado Supreme Court in 1977. In *People vs. Ro 'Mar* (Colo., 559 P. 2d 710) the court ruled that the licensure law violated persons state and federal due process rights because there was not definition in the statute concerning what entities had to be licensed as detective agencies. Approximately 200 persons were licensed by the Secretary of State at the time. Private investigators have not been licensed by the State of Colorado since 1977.

According to the 1987 sunrise review, which incorporated its 1985 counterpart, few consumer complaints had been filed with the local district attorneys and the Consumer Protection Section of the Office of the Attorney General regarding private investigators. At the time, complaints from local law enforcement officers generally involved private investigators misrepresenting themselves as government officials or police officers. Based on these and other findings, the Department of Regulatory Agencies concluded in 1987 that there had not been a significant increase in public harm as a result of ten years of deregulation.

Local Regulation

Under its home rule authority, private investigators are regulated in the City of Durango, Colorado. The City Code states that "it shall be unlawful for any person to operate and engage in the merchant patrol or private investigation business as provided in this article without first having obtained a business license and a merchant patrol/private investigator's license from the city."¹¹ Upon application for a license, the background, including the training and experience of each owner of a security guard or private investigator business is evaluated. The chief of police based on criminal background, and other information, is authorized to make the determination as to whether a license shall be issued, or whether an employee will be permitted to provide services within the city.

¹¹ Sec. 13-75, Durango Code.

Another key provision of Durango's regulatory scheme is an insurance requirement. The Code stipulates that "no license shall be issued until the merchant patrol or private investigation business has secured such insurance as will protect itself and the city from claims of bodily injury, death or property damage which may arise from carrying on a merchant patrol or private investigation business."¹² A representative of the Durango City Clerk's Office contacted in connection with this sunrise review expressed the opinion that the licensing program is working well, and that it reduces the liability exposure of the City of Durango.

Applicant's Proposal for Regulation

The applicant proposes licensing as the preferred means of regulation. Among other things, it is argued that a licensing scheme would:

- Prevent known felons from becoming practitioners and victimizing clients.
- Provide consumer protection from practitioner inexperience, misconduct and negligence by requiring minimum qualifications and experience for licensure.
- Allow Colorado private investigators to practice in other states that require licensing and where reciprocity agreements exist.
- Level the playing field for Colorado practitioners by controlling private investigators from other states who practice at will in Colorado.
- Provide additional consumer privacy protections by managing and monitoring those who access public and confidential information.

¹² Sec. 13-81, Durango Code.

The objectives of the applicant may also be evidenced by means of the proposed bill reproduced in Appendix A and available on www.ppiac.org. The applicant envisions a traditional licensing model administered by a board. This board is to consist of nine members appointed by the governor from the following groups: five industry representatives, two public members, and two active members of the Bar of the Colorado Supreme Court. The board will have the power to promulgate rules, issue licenses, investigate complaints, discipline licensees, issue subpoenas, conduct hearings, and administer entry examinations.

Opposition to Regulation

This sunrise review of the private investigator profession in Colorado is distinctive in one important respect: More often than not, occupations and professions that wish to be regulated speak with one voice. In this instance, there is significant opposition within Colorado's private investigator profession regarding the possibility of occupational regulation by the state.

Several expressions of opposition to the proposed licensing scheme have been received by the Office of Policy and Research. A typical concern was that regulation would put some small detective agencies out of business. One opponent of the proposed regulatory framework put it this way: "I also believe that the PPIAC is in favor of mandatory errors and omissions insurance coverage for all licensees. I have been in business as an investigator for twenty-four (24) years without a claim or lawsuit. The cost of insurance is high, between \$500.00 to \$1,000.00 per year. Added up, it appears as if it could cost \$2,000 per year to maintain a license in Colorado should this bill be passed. Sadly, many of the smaller investigative operations would be forced out of business should this occur."¹³

Additional opposition comes from former Federal Bureau of Investigation (FBI) agents. A letter from this group (reproduced in Appendix B) notes that "the proposed licensing bill is financially repressive and would be such an expense as to force many of these former FBI agents, who work in what may be described as a cottage industry, out of business. We note that there has been no licensing of private investigators in Colorado for 23 years and there is no demonstrated need for licensing. Therefore, the following [twenty-seven] former Special Agents of the FBI, all of

¹³ Correspondence dated November 4, 1999.

whom are engaged in the private investigative and industrial security business, wish to voice our objection to the proposed licensing bill.”

What is more, a “grandfather” clause is not envisioned in the proposed bill. Consequently, practicing private investigators who do not meet the new entry requirements would have to be retrained and pass an exam in order to obtain a license and stay in business.

Sunrise Analysis and Recommendation

Potential Public Harm

The Consumer Protection Section of the Office of the Attorney General was contacted by telephone in connection with this sunrise review. A representative of that office noted that there had been some complaints regarding private investigators, but that these are not tracked as a separate category. In general, these complaints involved unfulfilled consumer expectations based on initial representations. In addition, the Office of the Attorney General reports that some consumer inquiries had been received regarding regulatory oversight. The overarching determination of the representative we spoke with was that consumers are not well informed as to what private investigators can and cannot do, and that these factors need to be balanced with free market considerations.

Current Colorado law does not restrict any individual from being a private investigator. However, the Colorado Consumer Protection Act (§6-1-105(1)(b), (c), (e) and (l), C.R.S.) prohibits individuals from misrepresenting their certification, abilities, and associations, and making false or misleading statements concerning the price of goods, services, or property. In addition, §6-1-707(1)(a)(l), C.R.S., prohibits an individual from claiming “either orally or in writing, to possess either an academic degree or an honorary degree of the title associated with said degree, unless the person has, in fact, been awarded said degree.” While this Act does not prevent individuals from performing private investigative work, it does prohibit individuals from claiming that they have education or background that they do not possess. An individual who misrepresents his or her qualifications may be in violation of this Act.

In checking the Federal Trade Commission’s Internet site, at least one significant case having to do with Colorado private investigators came to light. In 1999 the Federal Trade Commission filed a civil suit against James and Regana Rapp, individually and doing business as *Touch Tone Information, Inc.* The suit charged *Touch Tone* with obtaining private financial information through a practice known in the information brokerage industry as “pretexting”, which involves making various misleading and false statements to financial institutions among others. The FTC concluded that “consumers have in fact

been injured and, absent injunctive relief, will continue to be injured by *Touch Tone's* violations of Section 5 of the FTC Act.”¹⁴

In conclusion, a potential for public harm exists in the unregulated practice of private investigators, but the extent of this potential harm does not appear to reach a threshold sufficient to warrant regulation. The public can be adequately protected by other means in a more cost-effective manner. Not only is this occupational group relatively small in Colorado, but existing avenues of remedy, such as the FTC and the courts, are capable of addressing the most egregious cases of public harm, while the remainder are adequately handled by market forces, such as consumer choice and the reputation of practitioners.

Practitioner Competence and Quality Assurance

Statutory evaluation criteria direct DORA to assess “whether the public needs, and can be reasonably expected to benefit from, an assurance of initial and continuing professional or occupational competence.”¹⁵ According to the applicant, the minimum skills necessary to be a private investigator include “a solid understanding of Federal privacy and consumer protection laws, Colorado civil and criminal procedure, rules of evidence and legal ethics. Proficiency may be achieved through previous law enforcement, military or legal experience, formal training, or an apprenticeship with an already licensed private investigator, or some combination thereof.”¹⁶

The two main methods of achieving practitioner competency are education and work experience. PPIAC maintains that knowledge of relevant laws is a fundamental competency, which may be acquired through formal training. Moreover, the applicant proposes that continuing education should also be required to ensure familiarity with changing law. It is not apparent, however, where this training might be obtained. The Professional Private Investigators Association states:

¹⁴ Civil Action No. 99-WM-783 available on <http://www.ftc.gov/>. Please note that the Federal Trade Commission files a complaint when it has "reason to believe" that the law has been or is being violated, and it appears to the Commission that a proceeding is in the public interest. The complaint is not a finding or ruling that the defendant has actually violated the law. The case will be decided by the court.

¹⁵ §24-34-104.1, C.R.S.

¹⁶ Sunrise Application, p. 10.

The applicant is not aware of any institution or program offering accredited or nonaccredited studies or training in Colorado to prepare practitioners for entry into the profession. Nonaccredited programs are offered in other states where regulation exists. Curriculum and tuition varies widely. However, throughout the country most of those in the profession either acquired their skills by working for others or have prior law enforcement, military or legal experience.¹⁷

Clearly then, work experience is the most important entry requirement into this profession. In the proposed bill (reproduced in Appendix A) the applicant states that

The Board shall require that the person has had appropriate experience in investigative work, for a person [sic] of not less than three years or less than 6,000 hours as determined by the Board. Such experience may include, but not be limited to, having been regularly employed as a private detective licensed in another state or an as investigator for a private detective licensed in this or another state, or has been a sworn member of a federal, state or municipal law enforcement agency (acting in an investigative capacity).¹⁸

Three years of work experience is an inordinate requirement in comparison to the apprenticeship periods of other established professions; for example, a certified public accountant must have one year of experience under the supervision of a licensee. Furthermore, the type of work experience to become a competent private investigator is not specified. This is problematic because having the right quantity of work experience without the right quality of work experience would be a disservice to consumers, a limitation that cannot be easily overcome by the profession, for example, by promulgating a comprehensive set of board rules. The reason is twofold. Not only does a considerable overlap of expertise and functions with other occupations exist,¹⁹ but also the potential range of consumer needs is so diverse that a single competency indicator would be misleading to the public.

¹⁷ Sunrise Application, p. 11.

¹⁸ Appendix A, Section 8 (C).

¹⁹ The Sunrise Application lists 11 other occupational groups that may also perform some of the 37 functions listed for private investigators.

In conclusion, the public does not need state sanctioned assurances of practitioner competence. Indeed, if adopted, such entry requirements would send potentially ambiguous quality assurance signals to consumers, which might cause them to become overly complacent regarding their selection of private investigator services. Informed consumer choice coupled with the reputation of practitioners is the best means of maintaining quality assurance.

Finally, the envisioned experience and education requirements would be an unduly restrictive barrier into the profession. The continuing education component of the applicant's proposal is similarly prohibitive and untenable.

Issues Raised by the Applicant

Reciprocity. A key concern in the sunrise application under review involves interstate investigations and reciprocity arrangements among the states. Reciprocity may be fruitfully viewed as having inflow (coming into Colorado) and outflow (going to other states) currents. Concerning inflow, the applicant states that licensing would:

Level the playing field for Colorado practitioners by controlling those from other states that practice in our state, while their home states prohibit us from practicing there. The status quo allows out-of-state practitioners to cherry-pick Colorado clients and assignments, leaving the less desirable and more difficult assignments to local practitioners. This often translates into higher fees and few choices for the Colorado consumer.²⁰

Besides being a statement in favor of regulation, this position is inconsistent with marketplace dynamics. Consumers in this scenario are depicted as passive entities to be "cherry-picked". In reality, it is consumers who pick private investigators of their choice, not the other way around. It is also self-evident that a greater number of practitioners means more choices for Colorado consumers, not less.

²⁰ Sunrise Application, p. 7.

Regarding the ability of Colorado private investigators to practice in other states (outflow), the applicant is concerned with the ability “to practice in other states,” and “the cost of interstate investigations.” Four points need to be raised at this stage. First, licensure in Colorado would not affect a situation in which either another state or local jurisdiction requires any given practitioner to meet indigenous regulatory laws. Second, temporary practice provisions, or the option to practice under the license of a local private investigator mitigates against reciprocity as a central argument for regulation. Third, some opponents of regulation have noted that in fact it is often cheaper for them to hire a private detective in another state to conduct a portion of an investigation rather than to travel to another state for this purpose. Finally, since the foremost purpose of regulation is to protect Colorado consumers, it is not incumbent upon the State to focus on matters beyond its jurisdiction.

Access to Information. PPIAC states in the sunrise application that licensing would “provide additional consumer privacy protections by managing and monitoring those who access public and confidential information, records, files and databases while providing the infrastructure and management vehicle for future privacy protections as they evolve or are legislated.”²¹ This argument does not hold water. First, public information is by definition non-private, and privacy protections cannot be easily extended to public information. Second, regarding information that is indeed private, trends appear to favor the strengthening of individual privacy. We agree with the applicant, however, that future privacy protections will continue to evolve, and consequently cannot be fully evaluated in this report.

Recommendation

Given the analysis enumerated in this report, and that the unregulated practice of private investigators has not resulted in significant harm to Colorado consumers over the past two decades, the recommendation of this sunrise review is that licensure of this occupation is not necessary. The public will not clearly benefit from state oversight. Colorado consumers can be adequately protected by market forces in a more cost-effective and equitable manner.

²¹ Sunrise Application, p. 7.

**Appendix A -
Proposed Model
Bill by PPIAC**

Relating to the licensing of private investigators.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF
COLORADO:

SECTION 1. DEFINITIONS

As used in this chapter:

- (1) "Board" means the Colorado Board of Private Investigators.
- (2) "Person" means an individual, partnership, corporation or other business entity.
- (3) "Private detective," "licensed private detective", "private investigator" or "licensed private investigator" means any person who, for a consideration engages in or solicits business or a accepts employment to furnish, or agrees to make or makes any investigation to obtain, information with reference to any of the following or provides, or offers or provide security of persons incident to any of the following:
 - A) Any crime or wrong committed or threatened against the laws or government of the United States, any state or territory, or any political subdivision thereof.
 - B) The identity, habits, conduct, honesty, loyalty, movements, whereabouts, affiliations, associations, transactions, reputation or character of any living and/or dead person or entity.
 - C) Libels, fire, losses, accidents, or damage or injury to persons or property.
 - D) The locations, disposition or recovery of lost or stolen property.
 - E) Evidence to be used before any court, board, office or investigative committee.
 - F) The identity or apprehension of persons suspected of crimes.

“Registered Investigator” means a person who is registered under section ___ of this Act and who performs all work under the direct supervision and control of a licensed investigator.

SECTION 2. EXEMPTIONS

A) The term “private detective” or “private investigator” shall not include:

- (1) Law enforcement officers certified under Section _____ while engaged in the performance of their official duties.
- (2) Insurance adjusters, insurance appraisers and persons regularly employed as investigators exclusively by one insurance company.
- (3) Persons regularly employed as investigators, exclusively by one employer in connection with the affairs of that employer only, provided that the employer is not a private detective agency.
- (4) Persons engaged exclusively in the business of furnishing of information as to the business and financial standing, and credit responsibility of persons, provided such information is not obtained through the preparation of investigative consumer reports as defined by the Federal Fair Credit Reporting Act.
- (5) Attorneys engaged in the practice of law, and law clerks, paralegals and other laypersons regularly employed exclusively by one attorney or law firm when the attorney or law firm retains complete professional responsibility for the work product of the law clerk, paralegal or other layperson in his, her or its employ.
- (6) Employees of the federal government, the state or of any municipality in the performance of official duties.
- (7) News gathering persons.
- (8) A person engaged in compiling genealogical information from public records.
- (9) Persons providing marketing or demographic information.

-
- (10) Authors researching materials for publication.

SECTION 3. STATE BOARD

(a) The Colorado Board of Private Investigators is created. The Board shall consist of nine (five) members appointed by the governor: five (three) members shall be providers of private investigative services; two (one) shall be a member of the general public with no financial interest other than as a consumer or potential consumer, the remaining two members shall be active members of the Bar of the Colorado Supreme Court.

(b) Members shall serve for terms of three years. No member may serve more than two consecutive full three-year terms. Vacancies shall be filled for the remainder of the unexpired term in the same manner as the original appointment. [Add language to stagger terms]

SECTION 4. POWERS AND DUTIES

The Board may:

- (1) Adopt rules necessary for the performance of its duties.
- (2) Conduct any necessary hearings in connection with the issuance, renewal, denial, suspension or revocation of a license or registration or otherwise related to the disciplining of a licensee, registrant or applicant.
- (3) Receive and investigate complaints and charges of unprofessional conduct against any holder of a license or registration or any application. The Board shall investigate all complaints in which there are reasonable grounds to believe that unprofessional conduct has occurred. The Board may delegate this responsibility to its staff members.
- (4) Conduct examinations and pass upon the qualifications of applicants for a license or registration.

(5) Issue subpoenas and administer oaths in connection with any authorized investigation, hearing, or disciplinary proceeding.

(6) Take or cause depositions to be taken as needed in any investigation, hearing or proceeding.

(7) Adopt rules establishing continuing education requirements and establish or approve continuing education programs to assist a licensee or registrant in meeting these requirements. Members may be removed by the governor under the provisions of _____.

SECTION 5. FUNCTIONING OF LICENSING BOARD

A) Annually, the Board shall elect a chairperson, a vice-chairperson and a secretary.

B) Meetings may be called by the chairperson and shall be called upon the request of two other members.

C) Meetings shall be conducted in accordance with _____.

D) A majority of the members of a shall constitute a quorum.

E) Business may be transacted by a majority vote of the members present and voting, unless otherwise provided by law.

F) Each member shall receive compensation and expenses as provided in _____.

SECTION 6. LICENSING

A) Licensing standards and procedure shall be fair and reasonable and shall be designed and implemented to measure and reasonably ensure an applicant's qualifications to practice the occupation. They shall not be designed or implemented for the purpose of limiting the number of persons engaged in the occupation.

B) If a licensee has a principal place of business for a licensed occupation, a license shall be prominently displayed at that place.

C) Licenses and registrations may not be transferred.

SECTION 7. LICENSES

The Board shall issue licenses to persons applying and qualifying for a private detective agency license.

SECTION 8. PRIVATE DETECTIVE AND PRIVATE DETECTIVE AGENCY LICENSES

A) No person shall engaged in the business of a private detective or operate a private detective agency in the state without first obtaining a license to do so from the Board. The Board shall not issue a license to a private detective or a private detective agency without first obtaining and approving the following:

(1) An application filed in proper form.

(2) An application fee as established pursuant to rules to be adopted by the Board.

(3) Evidence that the applicant has attained the age of majority.

(4) Evidence that the applicant has successfully pass the examination required by Section 9 of this Act.

B) The Board may inquire of the Colorado Criminal Information Center for any information or criminal records of the applicant, and the center shall provide such information to the Board. The Board, through the Colorado Criminal Information Center, may also inquire of the appropriate state criminal record repositories in all states in which it has reason to believe an applicant has resided or been employed, and it may also inquire of the Federal Bureau of Investigation, for any information on criminal records of the applicant. The Board may also make such additional inquiries as it deems necessary into the character, integrity and reputation of the applicant.

C) The Board shall require that the person has had appropriate experience in investigative work, for a person of not less than three years or less than 6,000 hours as determined by the Board. Such experience may include, but not be limited to, having been regularly employed as a private detective licensed in another state or an as investigator for a private detective licensed in this or another state, or has been a sworn member of a federal, state or municipal law enforcement agency (acting in an investigative capacity).

D) An application for a license may be denied upon failure of the applicant to provide information required, upon a finding that the applicant does not meet a high standard as to character, integrity and reputation or for unprofessional conduct as defined in Section 16 of this Act.

D) Licenses shall be issued without examination to a person licensed under the laws of another jurisdiction to engage in the business of a private detective upon proof that the applicant holds a current valid license issued by a jurisdiction whose requirements are substantially equal to those of this state, provided that the applicant has applied in writing and has paid the appropriate fees pursuant to section 13 of this Act.

SECTION 9. EXAMINATIONS

The Board shall prepare, or have prepared, and administer, separate examinations for private detective service. Each examination shall be designed to test the competency of the applicant with respect to the lawful and safe provision of each respective service to the public.

SECTION 10. EMPLOYEES OF AGENCIES

A) A licensed private detective may employ such other persons as he or she deems necessary. However, the license holder shall be the qualifying agent for all in his or her employ and shall be responsible for the conduct of any such employees.

B) An agency shall register all agency investigative employees with the Board, unless that employee is separately licensed and is working as a subcontractor. Employees shall carry identification in a form satisfactory to the Board indicating the licensee by whom the person is employed.

C) The Board may inquire of the Colorado Criminal Information Center for any information on criminal records of all agency employees registering with the Board, and the center shall provide such information to the Board. The Board, through the Colorado Criminal Information center, may also inquire of the appropriate state criminal record repositories in all states in which it has reason to believe an employee has resided or been employed, and it may also inquire of the Federal Bureau of Investigation for any information on criminal records of the employee. The Board may also make such additional inquiries it deems necessary into the character, integrity and reputation of the employee.

SECTION 11. RECIPROCITY

The Colorado Board of Investigators may enter into a reciprocal agreement with the appropriate official of any other state to allow an investigator licensed in the other state to operate in Colorado if the Board determines that the requirements for licensure in that state are substantially similar to the requirements under Colorado law.

SECTION 12. RENEWALS

a) A license or registration issued under this chapter shall be renewed biennially upon payment of the required fee.

b) If an individual fails to renew in a timely manner, he or she may renew the license within 90 days of the renewal date by satisfying all the requirements for renewal and payment of an additional late renewal penalty.

SECTION 13. FEES

Applicants and persons regulated under this chapter shall pay the fees established by the Board. The following fees shall apply until the fees are adopted by the Board.

- 1) application for detective agency license: \$250.00
- 2) application for employee registration \$ 25.00
- 3) biennial renewal for detective agency license \$250.00
- 4) biennial renewal for employee registration \$ 25.00

SECTION 14. REINSTATEMENT

A person whose license or registration has lapsed or been terminated for more than 90 days shall only be reinstated upon filing a new applicant and meeting all requirements for initial issuance of the license or registration.

SECTION 15. PENALTIES

A) Persons who hold themselves out as engaging in the business of a private detective without first having obtained a license or who are not acting as a registered employee for a licensed detective agency, shall be guilty of a misdemeanor and subject to a fine of not more than \$1,000 or imprisonment for not more than six months, or both.

B) Any persons who is or has been an employee of a licensee and any licensee who divulges to anyone other than to his employer or as his employer shall direct, except before an authorized tribunal, any information acquired by him during such employment in respect to any of the work to which he has been assigned by such employer, and any such employee who willfully makes a false report to his employer in respect to any such work shall be guilty of a misdemeanor and subject to a fine of not more than \$1,000.00

SECTION 16. UNPROFESSIONAL CONDUCT

A) Unprofessional conduct is the conduct prohibited by this section or by the other statutes relating to the occupation, whether or not taken by a licensee, registrant or applicant.

B) Unprofessional conduct means any of the following:

- (1) Fraudulent or deceptive procuring or use of a license or registration
- (2) Willfully making or filing false reports or records in the practice of the occupation, willfully impeding or obstructing the proper making or filing of reports or records, or willfully failing to file the property report or record.
- (3) Occupational advertising which is intended or has a tendency to deceive the public.
- (4) Exercising undue influence on a person using the licensee's services, or promoting the sale of services or goods in a manner which exploits a person for the financial gain of the practitioner or of a third party.
- (5) Willful or grossly negligent failure to comply with substantial provisions of federal law or state statute governing the practice of the occupation.
- (6) Conviction of a felony, a crime or moral turpitude, or a crime related to the practice of the occupation.
- (7) Failing to make available, upon request of a person using the licensee's services, copies of documents in the possession or under the control of the licensee, when those documents have been prepared for and purchased by the user of services.
- (8) Conduct which evidences moral unfitness to practice the occupation.
- (9) Practicing the occupation when medically unfit to do so.
- (10) Gross or repeated malpractice.
- (11) Allowing any person to practice under a license who is not a partner or employee.

(12) Violating a confidential relationship with a client, or disclosing any confidential client information except:

- a) with the client's permission,
- b) in response to a subpoena or court order,
- c) when necessary to establish or collect a fee from the client, or
- d) when the information is necessary to prevent a crime that the client intends to commit,

(13) Accepting any assignment which would be a conflict of interest because of confidential information obtained during employment for another client.

(14) Accepting any assignment which would be a conflict of interest because of confidential information obtained during employment for another client.

(15) Using any badge, seal, card or other device to misrepresent oneself as a police officer, sheriff or other law enforcement officer or any representative of a governmental agency.

(16) Knowingly submitting a false or misleading report or failing to disclose a material fact to a client.

(17) Failing to complete in a timely manner the registration of an employee.

(18) Allowing an employee to work without carrying the required evidence of temporary or permanent registration.

(19) Failing to provide information requested by the Board

(20) Failing to return the temporary or permanent registration of an employee.

(21) Failing to notify the Board of a change in ownership, partner, officers or qualifying agent.

(22) Providing incomplete, false or misleading information on an application.

(23) Any of the following except when reasonably undertaken in an emergency situation in order to protect life, health or property:

- a) practicing or offering to practice beyond the scope permitted by law;
- b) accepting and performing occupational responsibilities which the licensee knows or has reason to know that he or she is not competent to perform; or
- c) Performing occupational services which have not been authorized by the consumer or his or her legal representative.

C) After hearing, the Board may take disciplinary action against a licensee, registrant or applicant found guilty of unprofessional conduct. Discipline by the Board against an applicant, licensee or registrant for unprofessional conduct may include denial of an application, revocation or suspension of a license or registration, imposed supervision, reprimand, warning, or the required completion of a course of action.

SECTION 17. REMEDIES

A party aggrieved by a final decision of the Board may appeal as provided in _____.

GRANDFATHER CLAUSE NOT INCLUDED PER VOTE OF MEMBERS

***Appendix B -
Letter by Former
FBI Agents***