

1 HB324  
2 116270-1  
3 By Representative McClendon  
4 RFD: Government Operations  
5 First Read: 19-JAN-10

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SYNOPSIS:                   Currently, the practice of private investigation is not regulated or licensed by the state.

                  This bill would regulate and license the practice of private investigation by private investigators.

                  This bill would define terms; create the Alabama Private Investigation Board and provide for its membership, meetings, officers, powers, and duties; would provide that the board is an enumerated agency for purposes of the Alabama Sunset Act, and to provide for periodic review of the board by the Alabama Sunset Committee; and would prohibit persons acting as a private investigator without a license, subject to criminal punishment as a Class A misdemeanor.

                  Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, prohibits a general

1 law whose purpose or effect would be to require a  
2 new or increased expenditure of local funds from  
3 becoming effective with regard to a local  
4 governmental entity without enactment by a 2/3 vote  
5 unless: it comes within one of a number of  
6 specified exceptions; it is approved by the  
7 affected entity; or the Legislature appropriates  
8 funds, or provides a local source of revenue, to  
9 the entity for the purpose.

10 The purpose or effect of this bill would be  
11 to require a new or increased expenditure of local  
12 funds within the meaning of the amendment. However,  
13 the bill does not require approval of a local  
14 governmental entity or enactment by a 2/3 vote to  
15 become effective because it comes within one of the  
16 specified exceptions contained in the amendment.

17  
18 A BILL  
19 TO BE ENTITLED  
20 AN ACT  
21

22 Relating to the regulation and the licensure of  
23 private investigators unless licensed by this act; to create  
24 the Alabama Private Investigation Board to regulate and  
25 license private investigators; to provide for the membership,  
26 terms, filling of vacancies, powers, including discipline  
27 powers, and duties of the commission; to provide that the

1 board shall be an enumerated agency for purposes of review by  
2 the Alabama Sunset Committee; to provide for application and  
3 licensure of private investigators; to provide penalties; and  
4 in connection therewith would have as its purpose or effect  
5 the requirement of a new or increased expenditure of local  
6 funds within the meaning of Amendment 621 of the Constitution  
7 of Alabama of 1901, now appearing as Section 111.05 of the  
8 Official Recompilation of the Constitution of Alabama of 1901,  
9 as amended.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. This act shall be known and may be cited  
12 as the "Alabama Private Investigators Licensing and Regulatory  
13 Act."

14 Section 2. As used in this act, the following terms  
15 shall have the following meanings:

16 (1) FELONY. A criminal offense that is defined and  
17 punishable under the laws of this state, or an offense  
18 committed outside the State of Alabama, which if committed in  
19 this state, would be subject to punishment by death or  
20 imprisonment in an Alabama penitentiary; a crime in any other  
21 state or a crime against the United States which is designated  
22 as a felony; or an offense in any other state, territory, or  
23 country punishable by imprisonment for a term exceeding one  
24 year.

25 (2) PRIVATE INVESTIGATION. The investigation by a  
26 person or persons for the purpose of obtaining information  
27 with reference to any of the following matters:

1           a. A crime committed or threatened against the  
2 United States or any state or territory of the United States,  
3 when operating under express written authority of the  
4 governmental official responsible for authorizing such  
5 investigation.

6           b. The identity, habits, conduct, movements,  
7 whereabouts, affiliations, associations, transactions,  
8 reputation, or character of any society, person, or group of  
9 persons.

10          c. The credibility of witnesses or other persons  
11 giving testimony in a criminal or civil action.

12          d. The whereabouts of missing persons, owners of  
13 unclaimed property or escheated property, or heirs to estates.

14          (3) PRIVATE INVESTIGATING. The act of any individual  
15 or company engaging in the business of obtaining or furnishing  
16 information with reference to any of the following:

17           a. A crime committed or threatened against the  
18 United States or any state or territory of the United States.

19           b. The identity, habits, conduct, business,  
20 occupation, honesty, integrity, credibility, knowledge,  
21 trustworthiness, efficiency, loyalty, activity, movement,  
22 whereabouts, affiliations, associations, transactions, acts,  
23 reputations, or character of any person.

24           c. The location, disposition, or recovery of lost or  
25 stolen property.

26           d. The cause or responsibility for fires, losses,  
27 accidents, damages, or injuries to persons or to property.

1           (4) PRIVATE INVESTIGATOR or INDIVIDUAL LICENSEE. A  
2 person who is engaged in private investigating and licensed in  
3 accordance with this act.

4           Section 3. No person shall hold himself or herself  
5 out to the public as a private investigator or use any term,  
6 title, or abbreviation that expresses, infers, or implies that  
7 the person is licensed as a private investigator unless the  
8 person at the time holds a valid license to practice private  
9 investigating as provided in this act. All applicants shall  
10 pass a criminal background check based on criteria established  
11 pursuant to Section 4.

12           Section 4. (a) There is created the Alabama Private  
13 Investigation Board. The membership of the board shall reflect  
14 the racial, gender, geographic, urban and rural, and economic  
15 diversity of the state. The board shall consist of the  
16 following members, each of whom shall be a resident of this  
17 state, appointed as follows:

18           (1) Three persons appointed by the Governor, from a  
19 list of 10 candidates provided by the Alabama Private  
20 Investigators Association, who shall have been principally  
21 engaged in the activities of private investigation in this  
22 state for at least five years prior to the date of their  
23 appointment. Initially, the Governor shall appoint two members  
24 for a term of two years and one member for a term of three  
25 years. Thereafter, successor members shall be appointed for  
26 terms of four years each.

1           (2) One person appointed by the Lieutenant Governor,  
2 from a list of five candidates provided by the Alabama Private  
3 Investigators Association, who shall have been principally  
4 engaged in the activities of private investigation in this  
5 state for at least five years prior to the date of their  
6 appointment. Initially, the Lieutenant Governor shall appoint  
7 the member for two years. Thereafter, successor members shall  
8 be appointed for terms of four years.

9           (3) One person appointed by the Speaker of the House  
10 of Representatives, from a list of five candidates provided by  
11 the Alabama Private Investigators Association, who shall have  
12 been principally engaged in the activities of private  
13 investigation in this state for at least five years prior to  
14 the date of appointment. Initially, the Speaker of the House  
15 of Representatives shall appoint the members for two years.  
16 Thereafter, successor members shall be appointed for terms of  
17 four years.

18           (4) One person appointed by the Attorney General,  
19 from a list of 10 candidates provided by the Alabama Private  
20 Investigators Association, who shall have been principally  
21 engaged in the activities of private investigation in this  
22 state for at least five years prior to the date of  
23 appointment. Initially, the Attorney General shall appoint the  
24 member for two years. Thereafter, successor members shall be  
25 appointed for terms of four years.

26           (5) One person appointed by the Alabama Private  
27 Investigators Association who shall have been principally

1 engaged in the activities of private investigation in this  
2 state for at least five years prior to the date of  
3 appointment. Initially, the Alabama Private Investigators  
4 Association shall appoint the member for two years.  
5 Thereafter, successor members shall be appointed for terms of  
6 four years.

7 (b) Following the initial appointments, all  
8 successor members of the board shall be appointed for a term  
9 of four years and shall serve until their successors are  
10 appointed and qualified by subscribing to the constitutional  
11 oath of office, which shall be filed with the Secretary of  
12 State.

13 (c) Any vacancy occurring on the board shall be  
14 filled by the appointing authority of the vacating member for  
15 the unexpired term. A member whose term has expired shall  
16 continue to serve with voting privileges, until a successor  
17 member is appointed.

18 (d) No member shall be appointed to succeed himself  
19 or herself for more than one full term.

20 (e) The appointing authority may remove a member of  
21 the board for misconduct, incompetency, or willful neglect of  
22 duty. The board may recommend to the appointing authority  
23 suggested administrative actions that may be taken against a  
24 board member for missing an excessive amount of meetings.

25 (f) Each member of the board shall receive a  
26 certificate of appointment from the Governor before entering  
27 upon the discharge of the duties of office.



1           Section 5. (a) The board is declared to be a  
2 quasi-judicial body, and the members or the employees of the  
3 board are granted immunity from civil liability and may not be  
4 liable for damages when acting in the performance of their  
5 duties under this act.

6           (b) Board members shall be defended by the Attorney  
7 General in regard to any litigation filed against them because  
8 of the performance of their duties under this act.

9           Section 6. At the initial meeting of the board and  
10 every four years thereafter, the members of the board shall  
11 select from among their members a chair and vice chair who  
12 shall be private investigators and who shall each have the  
13 power to do all things necessary and proper for carrying out  
14 the provisions of this act not inconsistent with this act or  
15 the laws of this state.

16           Section 7. (a) The board may promulgate rules  
17 necessary to implement this act and accomplish its objectives  
18 subject to the Alabama Administrative Procedure Act.

19           (b) The board may promulgate and establish canons of  
20 ethics and minimum acceptable professional standards of  
21 practice for licensees within any rules that it adopts.

22           (c) The board shall be entitled to the services of  
23 the Attorney General in connection with the affairs of the  
24 board.

25           Section 8. (a) The board shall establish regular and  
26 special meetings for the purpose of transacting its business.  
27 All members of the board shall be notified of the time and

1 place of each meeting pursuant to the Alabama Open Meeting  
2 Act.

3 (b) A majority of the board shall constitute a  
4 quorum at any meeting of the board.

5 Section 9. (a) Except as otherwise provided in this  
6 act, it shall be unlawful for any person to act as a private  
7 investigator, without first obtaining a license from the  
8 board. For prosecution purposes a violation of this act is  
9 classified as a Class A misdemeanor.

10 (b) All licenses issued to private investigators  
11 before the enactment of this act shall continue in effect  
12 until their expiration. Each holder of a license may  
13 thereafter obtain a renewal of the equivalent license under  
14 this act by complying with the terms and conditions for  
15 renewal prescribed in this act.

16 (c) Each licensee licensed in accordance with this  
17 act shall designate a physical address where his or her  
18 records are to be kept.

19 Section 10. An application and all information on an  
20 application for licensure as a private investigator shall be  
21 treated as confidential and shall be filed with the board on  
22 forms prescribed by the board. The application shall include  
23 all of the following information of the applicant:

24 (1) His or her full name.

25 (2) His or her date and place of birth.

26 (3) All residences during the immediate past five  
27 years.

1           (4) All employment or occupations engaged in during  
2 the immediate past five years.

3           (5) Three sets of classifiable fingerprints.

4           (6) A list of convictions and pending charges  
5 involving a felony or misdemeanor in any jurisdiction.

6           Section 11. (a) Each individual applicant shall meet  
7 the following criteria that he or she:

8           (1) Is at least 19 years of age.

9           (2) Is a citizen of the United States or a legally  
10 present resident alien.

11           (3) Has not been declared by any court of competent  
12 jurisdiction incompetent by reason of mental defect or disease  
13 unless a court of competent jurisdiction has subsequently  
14 declared the applicant competent.

15           (4) Has not been convicted of a crime of moral  
16 turpitude, with the board having the final determination on  
17 the interpretation of moral turpitude.

18           (5) Is of good moral character.

19           (6) Has passed an examination to be administered  
20 twice annually by the board designed to measure knowledge and  
21 competence in the investigation field.

22           (b) A study guide shall be provided to any applicant  
23 seeking to obtain an initial or renewal license under this  
24 act.

25           (c) Any investigator currently licensed in the state  
26 of Alabama shall not have to meet the initial application

1 requirements of this act, but shall be issued a license upon  
2 application.

3 Section 12. (a) Upon receipt of an application for a  
4 license pursuant to this act, nonrefundable, nonprorateable,  
5 application fees shall be submitted for the following  
6 services:

7 (1) A request that the Alabama Bureau of  
8 Investigation compare the fingerprints submitted with the  
9 application to fingerprints filed with the Alabama Bureau of  
10 Investigation. On subsequent applications, the Alabama Bureau  
11 of Investigation, at the request of the board, shall review  
12 its criminal history files based upon the name, date of birth,  
13 sex, race, and Social Security number of an applicant whose  
14 fingerprints have previously been submitted to the bureau for  
15 any new information since the date of the fingerprint  
16 comparison, and shall furnish any information thereby derived  
17 to the board.

18 (2) A request to submit the fingerprints to the  
19 Federal Bureau of Investigation for a search of its files to  
20 determine whether the individuals fingerprinted have any  
21 recorded convictions.

22 (b) After the approval of the application by the  
23 board, the board shall issue a two-year license in a form  
24 prescribed by the board to qualified applicants upon its  
25 receipt of a nonrefundable, nonprorateable, private  
26 investigator license fee.

1 (c) (1) If an application for a license is denied,  
2 the board shall notify the applicant in writing and shall set  
3 forth the grounds for denial. If the grounds are subject to  
4 correction by the applicant, the notice shall so state and  
5 specify a reasonable period of time within which the applicant  
6 shall make the required correction.

7 (2) The applicant shall be allowed to submit reason  
8 for reconsideration to the board within 30 days from the date  
9 of receipt of denial.

10 (d) The board shall issue an 8x10 license to all  
11 licensees which must be displayed on a wall of the workplace  
12 of the licensee. This license shall be deemed property of the  
13 State of Alabama and subject to forfeiture to the state upon  
14 revocation.

15 Section 13. (a) The board shall issue every private  
16 investigator licensee an identification card that shall  
17 contain the following information of the licensee:

18 (1) Name.

19 (2) Photograph.

20 (3) Physical characteristics.

21 (4) Private investigators license number.

22 (5) Expiration date of license.

23 (b) An identification card, which shall be issued in  
24 a credit card size and shall be permanently laminated.

25 (c) The identification card shall be carried on the  
26 person of the licensee when engaged in the activities of the  
27 licensee.

1           Section 14. Making a false statement to the board  
2 shall be punishable by a civil penalty not to exceed one  
3 thousand dollars (\$1,000) and assessment of the maximum  
4 application fee.

5           Section 15. Upon receipt of the application and  
6 applicable fees, the board shall conduct an investigation to  
7 determine whether the statements made in the application are  
8 true.

9           Section 16. (a) All licenses issued or renewed under  
10 this act shall be valid for a period of two years from the  
11 date of issuance. The board shall provide each licensee with a  
12 renewal application 60 days prior to the expiration of the  
13 license.

14           (b) The following fee schedule and a late renewal  
15 penalty fee shall apply to applicants and licensees of the  
16 board:

17           (1) Application fee: Seventy-five dollars (\$75)

18           (2) License issuance fee: Three hundred dollars  
19 (\$300).

20           (3) Testing fee: \$0.00

21           (4) License renewal fee: Three hundred dollars  
22 (\$300).

23           (5) Late renewal penalty fee: Fifty dollars (\$50).

24           (c) Each application for renewal shall be reviewed  
25 for criminal convictions and civil fraud findings.

1 (d) The late renewal penalty fee shall be assessed  
2 on any renewal application postmarked after the expiration  
3 date of the license.

4 (e) No renewal application may be accepted more than  
5 30 days after the expiration date of the license or after  
6 September 30 of the calendar year.

7 Section 17. (a) The board may suspend, revoke, or  
8 refuse to issue or renew any license issued by it upon finding  
9 that the holder or applicant has committed any of the  
10 following acts:

11 (1) A violation of this act or any rule promulgated  
12 under this act.

13 (2) Fraud, deceit, or misrepresentation regarding an  
14 application or license.

15 (3) Knowingly and willfully making a material  
16 misstatement in connection with an application for a license  
17 or renewal.

18 (4) A conviction by a court of competent  
19 jurisdiction of a felony or a misdemeanor if the board finds  
20 that the conviction reflects unfavorably on the fitness for  
21 the license.

22 (5) The commission of any act which would have been  
23 cause for refusal to issue the license or registration card  
24 had it existed and been known to the board at the time of  
25 issuance.

26 (b) In addition to, or in lieu of, any other lawful  
27 disciplinary action under this section, the board may assess a

1 civil penalty not exceeding two thousand dollars (\$2,000) for  
2 a violation of this act.

3 (c) A license may be suspended for the remaining  
4 license period and renewed during any period in which the  
5 license was suspended.

6 Section 18. (a) No licensee or applicant shall be  
7 required to obtain any authorization, permit, or license from,  
8 or pay any other fee or post a bond in, any municipality,  
9 county, or other political subdivision of this state to engage  
10 in any activity regulated under this act.

11 (b) Notwithstanding subsection (a), a municipality,  
12 county, or other political subdivision of this state may  
13 impose a bona fide occupational tax on a licensee.

14 Section 19. The board may negotiate and enter into  
15 reciprocal agreements with the appropriate officials in other  
16 states to permit licensed investigators who meet or exceed the  
17 qualifications established in this act to operate across state  
18 lines under mutually acceptable terms.

19 Section 20. The board shall provide a copy of this  
20 act and any rules promulgated under this act to the following:

21 (1) Each licensee, every two years.

22 (2) Any other person, upon request, for a reasonable  
23 fee established by the board.

24 Section 21. (a) The following acts when committed by  
25 an individual licensed as a private investigator in Alabama  
26 shall constitute a violation punishable as a Class A  
27 misdemeanor:



1           (1) To knowingly make a material misrepresentation  
2 as to the ability of the individual to perform the  
3 investigation required by a potential client in order to  
4 obtain employment.

5           (2) To make unsubstantiated monetary charges to a  
6 client for services not rendered or transportation not  
7 utilized.

8           (3) To knowingly make a false report to a client in  
9 relation to the investigation performed for a client.

10          (4) To continue an investigation for a client when  
11 it becomes obvious to the investigator that a successful  
12 completion of an investigation is unlikely without first  
13 advising the client and obtaining the approval of the client  
14 for continuation of the investigation.

15          (5) To reveal information obtained for a client  
16 during an investigation to another individual except as  
17 required by law.

18          (b) Persons licensed pursuant to this act are  
19 required to report any suspected instances of child abuse or  
20 neglect and must report their suspicions to local law  
21 enforcement or the Department of Human Resources, or both.

22          Section 22. The Administrative Procedure Act shall  
23 govern all matters and procedures respecting the hearing and  
24 judicial overview of any contested case.

25          Section 23. This act does not apply to the  
26 following:

1 (1) A private business employee conducting an  
2 investigation relating to internal affairs of his or her  
3 company.

4 (2) An investigation of the internal affairs of a  
5 law enforcement agency investigating an official duty or  
6 action by a current or prospective employee, including, but  
7 not limited to, the following agencies:

8 a. The Department of Public Safety.

9 b. Sheriffs departments in the State of Alabama.

10 c. District attorney offices in the State of  
11 Alabama.

12 d. The Attorney General's Office.

13 e. Local police departments.

14 f. The State Fire Marshals Office.

15 Section 24. (a) There is created within the board a  
16 division of investigation that shall be its official  
17 investigative agency.

18 (b) Each licensee shall provide to the investigative  
19 staff all records that pertain to the exact nature of the  
20 complaint under investigation and upon issuance of a subpoena.

21 (c) The board or executive director of the board may  
22 subpoena those persons or documents necessary to any  
23 investigation undertaken under this act if other means  
24 including, but not limited to, notification by return receipt  
25 registered United States mail, have not produced the desired  
26 results.

1           Section 25. (a) Each licensee shall complete eight  
2 hours of continuing professional education acceptable to the  
3 board in each calendar year.

4           (b) The board shall make every effort to ensure at  
5 least one seminar per year will be held in each congressional  
6 district of the state providing an opportunity to fulfill the  
7 continuing professional education requirements of this  
8 section, which shall include at least one hour per year on  
9 ethics.

10          (c) The board shall promulgate rules necessary to  
11 carry out this section.

12          Section 26. (a) Any person offering private  
13 investigator training must first be certified by the board.  
14 The board shall ensure that the instructors employed by the  
15 training provider possess both the experience and academic  
16 credentials to ensure that the curriculum and instruction will  
17 be beneficial to those seeking to enter the profession. In  
18 order to qualify as a certified trainer or instructor, or  
19 both, the trainer shall meet the following criteria:

20                 (1) He or she is 19 years of age.

21                 (2) He or she has had at least three years'  
22 experience satisfactory to the board with an investigative  
23 company or proprietary entity or with any federal, United  
24 States Military, state, county, or municipal law enforcement  
25 agency and relating to the block of instruction.

1 (3) He or she is personally qualified to conduct the  
2 training required by this act and is certified by the board  
3 which shall establish standards for the instruction process.

4 (b) A certified trainer, in his or her discretion,  
5 may instruct personally or use a combination of personal,  
6 instruction, audio, and visual training aids.

7 (c) To assist in the implementation of a training  
8 program, the certified trainer may use as an assistant trainer  
9 one who meets the following requirements:

10 (1) He or she is 19 years of age.

11 (2) He or she has had at least one year of  
12 experience with an investigative company or any United States  
13 Military, state, county, or municipal law enforcement agency.

14 (d) A certified trainer may be an employee of a  
15 private investigative or propriety agency or, if not, employed  
16 by an agency as a company under this act.

17 (e) The certified trainer shall certify that he or  
18 she has successfully completed the training and shall submit  
19 the certification to the board.

20 (f) The training program, fees, and requirements  
21 shall be established by rules promulgated by the board.

22 Section 27. No action taken under this act shall  
23 preclude prosecution under any other law of this state.

24 Section 28. The board shall be an enumerated agency  
25 for purposes of the Alabama Sunset Law of 1981, codified as  
26 Chapter 20 of Title 41, Sections 40-21-1 to 41-20-16, Code of  
27 Alabama 1975. The board shall terminate October 1, 2012, and

1 every four years thereafter, unless continued by the Alabama  
2 Sunset Committee pursuant to Chapter 20.

3 Section 29. Although this bill would have as its  
4 purpose or effect the requirement of a new or increased  
5 expenditure of local funds, the bill is excluded from further  
6 requirements and application under Amendment 621, now  
7 appearing as Section 111.05 of the Official Recompilation of  
8 the Constitution of Alabama of 1901, as amended, because the  
9 bill defines a new crime or amends the definition of an  
10 existing crime.

11 Section 30. This act shall become effective on the  
12 first day of the third month following its passage and  
13 approval by the Governor, or its otherwise becoming law.