



H.B. 188

124th General Assembly
(As Introduced)

Rep. Schaffer

BILL SUMMARY

- Transfers administration duties of the laws governing private investigators and security guards from the Director of Commerce to the Superintendent of the Division of Real Estate and Professional Licensing.
- Eliminates the requirement that private investigators or security service providers and their employees notify local law enforcement agencies within 12 hours of their arrival in the local jurisdiction.
- Requires employees of licensees to register as registrants and to renew their registrations annually.
- Exempts commissioned police officers from employee registration requirements and from the bill's requirements when acting within the scope of their commissions.
- Allows the Superintendent to contract with a vendor to administer private investigator or security guard license examinations.
- Requires background checks annually for licensees and registrants.
- Allows the Superintendent to accept with limitations background investigation information of licensees and registrants from the Federal Bureau of Investigation.
- Requires all licensees and registrants to carry identification cards that indicate whether the holder is authorized to carry or prohibited from carrying a firearm.
- Requires all firearm training to be conducted by the Ohio Peace Officer Training Commission.

- Adds a list of prohibited activities for persons regulated under the laws governing private investigators and security guards.
- Removes the "knowingly" requirement from the prohibition against violating the laws or rules governing private investigators and security guards.
- Establishes a time line for the enforcement of the laws and rules governing private investigators and security guards.
- Adds new exemptions from the licensing requirements and modifies existing exemptions.
- Modifies requirements whereby a corporation may obtain a license to engage in the business of providing private investigator and security guard services.
- Modifies application and experience requirements for individual private investigator and security guard licensees.
- Allows the late renewal of licenses with limitations.

CONTENT AND OPERATION

Background

Existing law requires the licensing and regulation by the Director of Commerce of private investigator and security service providers and their employees. The law establishes three general classes of license: (1) a class A license which allows an individual or other business entity to engage in both the business of private investigation and security service provider, (2) a class B license which allows one to engage only in the business of private investigation, and (3) a class C license which allows one to only engage in the business of providing security services. The law also requires licensees to register employees with the Director. Licensees and registered employees must carry identification cards and are subject to various restrictions on their activities and in the possession and use of firearms.

Exemptions from the private investigator and security guard licensing law

Under current law, there are exceptions to who is considered a private investigator or security guard, and who therefore, is required to abide by the licensing laws governing private investigators or security guards. The bill makes

the following modifications and additions to the list of persons who are exempt from existing licensing laws governing private investigators and security guards:

(1) Under current law, public officers and employees whose official duties require them to engage in investigator activities are exempt from the licensing requirements of private investigators and security guards. The bill adds security activities to this exemption.

(2) Under current law, attorneys or any expert hired by an attorney for consultation or litigation purposes is exempt. The bill replaces the word "expert" with "person," thereby broadening the scope of the exemption, and clarifies that a person consulting with an attorney is exempt if the consultation is for legal purposes.

(3) Under the current law, personnel placement services licensed under the Revised Code are exempt. The bill broadens this exemption by exempting all personnel placement services, regardless of licensure status under the Revised Code.

(4) Under current law, certain persons residing in Ohio who conduct research for unclaimed fund or warrant money purposes are exempt. The bill removes the restriction that requires the person to reside in Ohio.

(5) The bill adds any commissioned peace officer acting within the scope of the peace officer's commission, or who performs contract security services directly on behalf of, and while being compensated through, the police department, sheriff department, or political subdivision for whom the peace officer is commissioned. Commissioned peace officers also are exempt from the bill's registration requirements. (*See below, "Registrants."*)

(6) The bill adds any collection agent operating under a contract with either the Department of Job and Family Services or a child support enforcement agency for the purpose of collecting arrearages in child support money owed.

(7) The bill adds any community policing or block watch organization and their employees who provide protection, for compensation or otherwise, of persons or property within a neighborhood, defined vicinity, or locality.

(8) The bill exempts any person who, for hire or otherwise does any of the following:

(a) Apprehends persons who have forfeited security or broken their terms of a security release, fled from justice, or escaped from confinement;

(b) Locates persons by tracing their domicile history for the purpose of repossessing property;

(c) Provides pre-departure screening services for licensed air carriers at various airport terminals under federal aviation law;

(d) Serves as an informational monitor for the sole purpose of advising, warning, or cautioning members of the general public or exclusively provides, compiles, or distributes public information that is available to, or may be gathered independently by the general public;

(e) Organizes or participates in the escorting of a funeral procession;

(f) Engages in serving process on behalf of any attorney, court of law, or legal tribunal. (Secs. 4749.01(H) and 4749.06(E).)

Superintendent duties

Under current law, the Department of Commerce administers the laws governing private investigator and security guard licensing. Current law allows the Superintendent of the Division of Real Estate and Professional Licensing to appoint employees and adopt rules as necessary to administer the chapter. The bill removes reference to appointing employees and adds the specific requirement that the Superintendent establish rules relating to the process used to verify the experience of an applicant for licensure. Throughout the bill, the duties of the Director of Commerce with respect to the licensing and regulation of private investigators or security service providers are specifically assigned to the Superintendent of the Division of Real Estate and Professional Licensing as the person who administers the law. (Sec. 4749.02.)

License requirements

Corporate licenses

Under current law, each officer or qualifying agent who qualifies a corporation for a license as a private investigator or security service provider is required to surrender any personal license of a similar nature that the officer or qualifying agent may possess. Likewise, if an officer or qualifying agent of a corporation is the only individual who qualifies a corporation for a license, and that individual wishes to obtain a license in that individual's name, then the corporation license must be surrendered.

The bill removes these requirements. (Sec. 4749.03(A)(2), (H)(2), and (H)(4).) Throughout this analysis, the term "applicant" will be used to mean

individuals or corporate officers and qualifying agents who apply for individual or corporate licenses respectively.

Application for a license

Current law requires an application for a license to provide private investigator or security guard services or to provide both to be in writing and under oath. The bill removes this requirement and instead allows the Superintendent to prescribe the form of application (sec. 4749.03(B)).

In the case of a corporation, current law requires the license application to include the name of the officer or qualifying agent who files the application. The bill removes this requirement and instead only requires the name of the corporation to be included on the application (sec. 4749.03(B)).

Current law requires an application for a license to be accompanied by various identification and reference information, as well as a fee. The bill allows the requirements to be changed by rule and removes from existing law, the requirement that the applicant submit one recent full-face photograph. The bill also allows the applicant to submit a fingerprint notice form (not defined in the bill) in place of one complete set of the applicant's fingerprints as required under current law. (Sec. 4749.03(B)(1) and (2).)

Experience

Current law requires applicants for licensure as a private investigator, or security guard, or both to have been engaged in investigation or security services work, the practice of law, or to have acquired equivalent experience approved by the Director of Commerce for a period of at least two years immediately preceding application for licensure.

The bill broadens the time period in which the experience must be gained by requiring the applicant to have been engaged in the relevant experience for at least two of the five years immediately preceding application. (Sec. 4749.03(A)(1)(b).)

Fees

The bill removes from current law, the requirement that the current \$250 license fee be returned to the applicant if a license is not issued to the applicant. (Sec. 4749.03(B)(4).)

Examinations

Current law requires an applicant for a license to pay a \$25 examination fee to the Director of Commerce. The fee is the same whether the license application is to provide private investigator or security guard services, or both.

The bill allows the Superintendent to hold and administer examinations or to enter into a contract with a testing service vendor to hold and administer examinations for the purposes of testing the qualifications of applicants. If the Superintendent enters into a contract with a testing service vendor, the applicant for examination must pay the testing vendor's examination fee established by the vendor directly to the testing service vendor. (Sec. 4749.03(A)(1)(e) and (B)(3).) Whoever administers the test is also responsible for notifying the applicant of the time and place of the examination (sec. 4749.03(D)).

Background investigation of applicants

Current law requires the Director of Commerce to forward application material to the Bureau of Criminal Identification and Investigation ("BCII") for investigation of the applicant.

The bill adds that the Superintendent may accept the results of an investigation performed by the Federal Bureau of Investigation ("FBI") if that investigation covers Ohio and was conducted not more than 12 months prior to the time the results are provided to the Superintendent. (Sec. 4749.03(C).)

Identification cards

Under current law, the Director of Commerce must issue identification cards to individuals who qualify for a license, but not to officers or qualifying agents of corporations who qualify the corporation for a license.

The bill requires the Superintendent to issue identification cards to all applicants who qualify for a license, which includes individuals, officers, and qualifying agents. The bill removes the requirement that a corporation license must include the name of the officer or qualifying agent who qualified the corporation. The bill also adds that if an applicant is prohibited by the state or federal law from carrying a firearm, the Superintendent must indicate this on the applicant's identification card. (Sec. 4749.03(E).)

License renewal

Under current law, licenses expire annually on the first day of March. The bill adds to the existing renewal process that prior to March first of each year, licensees must file a renewal form with the Superintendent and submit the required

renewal fee (\$250 under current law) and any additional information the Superintendent requires. The bill also requires each licensee to undergo the same type of background investigation by either the BCII or the FBI in the same manner required for initial licensure. (*See above, "Background investigation."*) If a fee is associated with the background investigation, the bill requires the licensee to pay that fee. The bill prohibits the Superintendent from renewing a license until the required background investigation is complete. The bill removes from current law the prohibition of re-examining current licensees for license renewal. (Sec. 4749.03(F).)

Late renewal of a license

The bill allows a licensee to renew a license after March 1 but before May 31 of each year by submitting to the Superintendent a renewal form, the standard renewal fee of \$250, and a late renewal fee of \$125. Failure to renew a license by May 31 results in the automatic revocation of the license. After revocation, the former licensee is required to apply for a license as an initial licensee to obtain a valid license. (*See above, "License requirements."*) Under the bill, the expiration of a corporate license results in the expiration of the license of each licensee affiliated with that corporation and the license of each individual who qualified the corporation for licensure. (Sec. 4749.03(F).)

Branch offices

Under current law, licensees are required to report the location of their branch offices to the Department of Commerce, and the sheriff of the county and the police chief of any municipal corporation where the office is located. The bill requires the location to be reported to the Division of Real Estate and Professional Licensing only.

Under current law, if a licensee moves an office, then the licensee is required to notify the proper authorities within 48 hours of the move. The bill eliminates this requirement.

Current law also prohibits a licensee and any of the licensee's employees from engaging in the business of private investigation or security services unless within 12 hours of the licensee's or employee's arrival at the location, the licensee or employee notifies the sheriff and police chief of that location and of the intended length of stay. The bill eliminates this provision. (Sec. 4749.05.)

Registrants

Under current law, licensees are responsible for registering their employees with the Department of Commerce no sooner than three days and no later than

seven days after the date the employee is hired. Under the bill, registration is no longer the responsibility of the licensee, rather, the employee is required to register with the Division of Real Estate and Professional Licensing not less than seven days after the date of hire. Throughout the bill, this person is referred to as a "registrant" instead of a "registered employee," the term used in existing law.

The bill allows partners or other affiliates of licensees to become registrants (without being employees) provided the partners or other affiliates meet the bill's registration requirements. Current law sets forth a registration process. The bill modifies that process as follows:

(1) Allows the Superintendent to modify the registration requirements by rule;

(2) Removes the requirement that the applicant submit a recent photograph;

(3) Changes the registration fee from \$18 to an amount established by the Superintendent in rule and recharacterizes the fee as an "initial" registration fee;

(4) Adds that an applicant may submit a fingerprint notice form for identification purposes instead of one complete set of the applicant's fingerprints as required under current law.

Current law allows the Superintendent to require the applicant for registration to undergo a background check. The bill requires a background check for registrants under the same guidelines provided for licensee background checks. (*See above, "Application for a license."*) (Sec. 4749.06(B).)

The bill prohibits a registrant from engaging in the business of security services of private investigation as an independent contractor. The bill allows a registrant to work for an unlimited number of properly licensed licensees. (Sec. 4749.06(F) and (G).)

Registrant identification card

Under current law, a registered employee's identification card must contain the license number and signature of the employee's employer as well as the employee's name, address, age, physical description, and right thumb print or other acceptable identification mark, a recent photograph, and the employee's signature.

The bill modifies the contents of the identification card as follows:

(1) Replaces age with birth date;

(2) Removes thumb print or other acceptable identification mark;

(3) Removes photograph;

(4) Adds that if the employee is prohibited by state or federal law from carrying a firearm, the identification card must reflect that prohibition. (Sec. 4749.06(B).)

Current law prohibits a licensee from permitting an employee other than a person who qualified a corporation for licensure, to provide private investigation or security services prior to receiving an identification card, unless the client using those services signs a written waiver.

The bill adds that this limitation applies to partners or other affiliates of the licensee. The bill also adds that employees, partners, or other affiliates may only perform services under a waiver on a temporary basis, not to exceed 90 days from the date of hire. (Sec. 4749.06(C).)

Firearms training

Current law requires a licensee or registrant who intends to carry a firearm in the course of business or employment to complete a basic firearm training program with specific requirements set forth in law.

The bill removes reference to specific training requirements and instead requires the licensee or registrant to carry at all times during employment, the identification card issued by the Superintendent and certification of firearm training issued by the Ohio Peace Officer Training Commission. (Sec. 4749.06(D).)

Registration renewal

The bill creates a renewal process for registrants. Registrations must be renewed on or before a date established by the Superintendent in rule by filing a form and submitting a renewal fee also established by the Superintendent in rule. The registration is presumed to be bi-annual and is referenced as such in the bill. In conjunction with each renewal, the bill requires the Superintendent to request a background investigation of each registrant in the same manner as prescribed for license renewal (*see above*, "**License renewal**."). Furthermore, the bill prohibits the renewal of a registration until the required background investigation is complete and the Superintendent has determined that the registrant has not been convicted of a felony within the 20 years preceding the year of renewal. (Sec. 4749.061.)

Under the bill, failure to renew a registration on or before the date established by the Superintendent in rule results in the immediate revocation of the registration. Following revocation, a person must complete the initial registration requirements to operate as a registrant. (Sec. 4749.061.)

Discipline

Under current law, the Superintendent may revoke, suspend, or refuse to renew a license or registration for certain violations of the laws governing private investigators and security guards. The bill clarifies that the refusal to renew a license or registration only occurs when a renewal application is submitted to the Superintendent and that an appeal may only follow if a license or registration is not renewed after a renewal form has been submitted. (Sec. 4749.04(A).)

The bill also adds the following violations for which the Superintendent may revoke, suspend, or refuse to renew a license or registration:

(1) Failure to maintain and carry a registration card and, if applicable, certification of firearm training issued by the Ohio Peace Officer Training Commission;

(2) Failure to comply with a subpoena;

(3) Failure to report any criminal convictions of any registrant operating under a licensee or any affiliated licensee;

(4) Failure to keep complete and accurate records of all personnel records for a period of two years from the date of hire, employment, or compensation for any services;

(5) Failure to keep complete and accurate records of all weapon certifications and recertifications for a period of two years;

(6) Acting in a manner that requires a license or registration or acting with an expired or revoked license or registration;

(7) In the case of a licensee, failure to require all registrants of the licensee who carry firearms as part of their job duties, to carry and maintain a valid certification of firearm training issued by the Ohio Peace Officer Training Commission;

(8) Carrying a firearm when the identification card issued contains a prohibition against carrying firearms;

(9) Failure to timely submit quarterly reports and termination notices in accordance with rules adopted by the Superintendent. (Sec. 4749.04(A)(5) to (13).)

Civil penalties

Under current law, the Superintendent may issue a civil penalty of not less than \$100 and not more than \$200 per day for each day of the violation instead of suspending, revoking, or refusing to renew a license or registration.

Under the bill, a civil penalty may be imposed in an amount not to exceed \$100 per calendar day that the violation occurs. The bill also adds that in the case of a licensee's failure to require all registrants working for the licensee who carry firearms as a part of their job to carry certification for the firearm, the time period of the violation is calculated by adding together the number of calendar days as they occur consecutively from the day of hire of the registrant until the Superintendent discovers the violation. (Sec. 4749.04(B).)

Enforcement

Under current law, if the Superintendent finds a person operating as a private investigator or security guard without a license or registration, the Superintendent may issue an order to the person to show cause why the person does not fall within the requirements of the private investigator and security guard laws. The Superintendent is required to hold a hearing and then may issue a cease and desist order describing the person and activities subject to the order.

The bill eliminates reference to issuing a order to show cause and to holding a hearing prior to issuing a cease and desist order. (Sec. 4749.11(F).)

The bill also adds the following requirement and procedures to existing law regarding the Superintendent's authority to enforce the law:

(1) All information obtained by investigators is confidential, except the Superintendent may waive confidentiality to allow the information to be used by the Department of Commerce in an administrative or court proceeding, or to provide for data sharing with a state agency;

(2) Not more than 60 business days after the date of the initial investigation, the investigator is required to issue a written report of the findings to the Superintendent;

(3) Not more than 14 business days after a written report is filed with the Superintendent, the Superintendent is required to determine whether there exists reasonable and substantial evidence of a violation;

(4) If evidence of a violation exists, within seven business days of that determination, the Superintendent is required to notify the licensee, registrant, or other person believed to be in violation of the determination and to schedule a hearing in accordance with the Administrative Procedure Act. A licensee, registrant, or the Superintendent may request an extension of up to 30 business days for good cause shown. The extension is not mentioned in the bill for a person who is not a licensee or registrant who is charged with violating the laws governing private investigators and security guards;

(5) Not later than 25 business days after the last day of hearings, the hearing examiner is required to file a report of findings of fact and conclusions of law with the Superintendent;

(6) Not later than 15 days after the report is submitted to the Superintendent, the Superintendent must review the report to determine whether to impose disciplinary sanctions upon the licensee or registrant and issue an order setting forth the Superintendent's determination, along with any sanctions to be imposed. (Sec. 4749.11.)

Reciprocity

Existing law allows the Director of Commerce to waive the examination requirement for qualified licensees of another state who seek licensure in Ohio.

The bill broadens the scope of reciprocity by allowing the Superintendent to waive any licensing requirements to non-resident applicants for licensure (sec. 4749.12).

Penalties

Current law prohibits licensees and registrants from engaging in certain activities. The bill modifies existing law as follows:

(1) Prohibits *any* violation or authorization, or permitting another to violate the laws or rules governing private investigators and security guards where in current law, the prohibition is against *knowingly* violating the laws;

(2) Adds the requirement that a licensee or registrant convicted of a felony must notify the Superintendent within five days of the conviction. Failure to comply results in immediate revocation of the violator's license or registration;

(3) Adds that registrants affiliated with a licensee may indicate that they are authorized to engage in private investigation or security services or both. (Sec. 4749.13.)

Definitions

The bill adds the following definitions:

(1) A "branch office" means any location where business activity is conducted for which a license is required;

(2) A "registrant" means an employee, partner, or other affiliate of a class A, B, or C licensee who had been registered with the Division of Real Estate and Professional Licensing in accordance with the law;

(3) A "corporation" means a for profit corporation and any of the following organizations existing under the laws of Ohio or any other state:

(a) A business trust or association;

(b) A real estate investment trust;

(c) A common law trust;

(d) An unincorporated business or for profit organization, including a general or limited partnership;

(e) A limited liability company.

(4) "Person" means any individual, corporation, limited liability corporation, business trust, association, estate, trust, partnership, or limited liability partnership.

(5) "Date of hire" means the date that an employee is first employed or compensated for services rendered, irrespective of the actual number of days worked. (Sec. 4749.01(J) to (N).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-27-01	p. 264

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