

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 02/03/09
 LAST UPDATED 03/07/09 HB HJC/CS/380/aHFI#1

SPONSOR HJC

SHORT TITLE Private Investigator Licensing & Regulation SB _____

ANALYST Wilson

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	Indeterminate Minimal	Indeterminate Minimal	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0.1	\$0.1		Recurring	Various

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Attorney General's Office (AGO)
- Corrections Department (CD)
- Public Defender Department (PDD)
- Regulation & Licensing Department (RLD)

SUMMARY

Synopsis of HFI#1 Amendment

The House Floor amendment 1 to the HJC/CS/340/HB 380 removes language in the title that relates to a private patrol company. However, it adds back language in the body of the bill holding the private patrol company to the same licensing requirements and penalties as the private patrol operator.

Synopsis of Original Bill

The House Judiciary Committee substitute for House Bill 380 amends the Private Investigators

Act (PIA) makes it unlawful for a private patrol operator to contract with or employ a person to perform duties as a security guard, private patrol operations manager or private patrol employee unless that person is licensed or registered by the RLD to perform those duties pursuant to the PIA.

The bill amends and adds penalties. In accordance with the provisions of the Uniform Licensing Act, and in addition to other penalties provided by law, RLD may impose the following against:

- a person who is found by the RLD to be engaging in a practice regulated by the RLD without an appropriate license or registration, civil penalties not to exceed \$5,000;
- a private patrol operator who contracts with or employs another person to engage in a practice regulated by the RLD under the PIA without an appropriate license or registration, civil penalties not to exceed \$5,000;
- a person who engages in a business regulated by the PIA who fraudulently makes a representation as being a licensee or registrant is guilty of a misdemeanor and for a first or second conviction shall be sentenced pursuant to the Sentencing Authority for Misdemeanors Act;
- an individual who fraudulently represents that the individual is employed by a licensee is guilty of a misdemeanor and for a first or second conviction shall be sentenced pursuant to the Sentencing Authority for Misdemeanors Act;
- a private patrol operator who contracts with or employs another person to engage in a practice regulated by the RLD under the Private Investigations PIA without an appropriate license or registration is guilty of a misdemeanor and for a first or second conviction shall be sentenced pursuant to the Sentencing Authority for Misdemeanors Act; and
- a person who violates a mandatory requirement, as set forth by the RLD in rule, of the Private Investigations Act is guilty of a misdemeanor except as provided in Subsection A of this section and for a first or second conviction shall be sentenced pursuant to Upon a third or subsequent conviction pursuant to this section, an offender is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to the Criminal Sentencing Act.

A new section of the PIA is enacted to read whenever the RLD has reasonable cause to believe that a person has violated a provision of the Private Investigations Act or a rule and the violation creates a safety risk for the community and immediate enforcement is deemed necessary, the RLD may issue a cease and desist order to require the person to cease the violation. At any time after service of the order to cease and desist, a person may request a prompt hearing to determine whether a violation occurred. If a person fails to comply with a cease and desist order within 24 hours, the RLD may bring a suit for a temporary restraining order and for injunctive relief to prevent further violations.

Whenever the RLD possesses evidence that indicates a person has engaged in or intends to engage in an act or practice constituting a violation of the PIA or a rule adopted pursuant to that

act, the RLD may seek, and the district court of Santa Fe County may issue, an order temporarily or permanently restraining or enjoining the act or practice. The RLD shall not be required to post a bond when seeking a temporary or permanent injunction.

FISCAL IMPLICATIONS

An increase in the amount of fines could result in increased revenue for the RLD. However, a primary objective in increasing fines is to decrease unlicensed and illegal activity. To further promote this objective, the focus of the RLD will be to provide up-front regulations and educational information.

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

In the past year, the boards and commissions of RLD went through a successful rule-making process to implement changes to the Act from 2007. The public hearings held on these rules generated extensive public comment. This bill will address many of those concerns and enforcement challenges the RLD has experienced.

A major concern expressed by the public and the industry centered on unlicensed activity in the State of New Mexico. This is exacerbated by the minimal level fines for violations to the Act. Increasing the fines for violations from \$1,000 to \$5,000 will discourage violations and increase compliance with the PIA.

Naming second violations fourth degree felonies will also discourage violations and increase compliance with the PIA.

In handling complaints, the RLD efforts have been hampered by the lack of authority to issue cease and desist orders. Adding this authority, along with the ability to seek a restraining order through the district court will also discourage violations and increase compliance with the PIA.

ADMINISTRATIVE IMPLICATIONS

RLD and any other affected agencies should be able to handle the enforcement of the provisions in this bill as part of ongoing responsibilities

DW/svb:mc