

HOUSE BILL 259

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

William "Bill" R. Rehm

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO LICENSING; AMENDING THE PRIVATE INVESTIGATIONS ACT; REQUIRING REGISTRATION FOR INSTRUCTORS AND PRIVATE PATROL EMPLOYEES; REQUIRING COURSEWORK TO PROVIDE TRAFFIC CRASH RECONSTRUCTION SERVICES; SPECIFYING LIMITATIONS ON UNLICENSED PERSONS; PRESCRIBING LICENSE FEES; PROVIDING FOR BIENNIAL RENEWAL OF LICENSES; CHANGING THE SUNSET DATES FOR THE PRIVATE INVESTIGATIONS ADVISORY BOARD; REPEALING A COMPILED TEMPORARY PROVISION.

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 61-27B-3 NMSA 1978 (being Laws 1993, Chapter 212, Section 3, as amended) is amended to read:

"61-27B-3. LICENSE OR REGISTRATION REQUIRED.--It is unlawful for an individual to:

A. act as a private investigator, private patrol operator, security guard, private investigations employee, private investigations manager or private patrol operations manager or to make any representation as being a licensee or registrant unless the individual is licensed by the department pursuant to the Private Investigations Act;

B. render physical protection for remuneration as a bodyguard unless the individual is licensed as a private investigator or a private patrol operator;

C. continue to act as a private investigator, private patrol operator, security guard, private investigations employee, private investigations manager or private patrol operations manager if the individual's license issued pursuant to the Private Investigations Act has expired;

D. falsely represent that the individual is employed by a licensee; [~~or~~]

E. practice polygraphy for any remuneration without a license issued by the department in accordance with the Private Investigations Act; or

F. provide instruction to individuals to qualify

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for licensure as security guards HJC→~~or private patrol~~
~~operators~~←HJC or any other person who is required to have
professional training to be licensed, certified or registered
pursuant to the Private Investigations Act without a
registration in good standing issued by the department in
accordance with the Private Investigations Act."

SECTION 2. Section 61-27B-4 NMSA 1978 (being Laws 1993,
Chapter 212, Section 4, as amended) is amended to read:

"61-27B-4. PERSONS EXEMPTED--LIMITATIONS ON UNLICENSED
ACTIVITIES.--

A. As used in this section, "temporary" means a
period of time not to exceed the duration of one private event
or one school or nonprofit organization event, as described in
Paragraphs (2) and (3) of Subsection B of this section.

B. The Private Investigations Act does not apply
to:

(1) an individual employed exclusively and
regularly by one employer in connection with the affairs of
that employer, provided that the individual patrols or provides
security only on the premises of the employer as limited by the
employer;

(2) an individual employed exclusively to
provide temporary security at a private event that is not open
to the public;

(3) individuals providing temporary security
at athletic or other youth events and where the events occur

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under the auspices of a public or private school or a nonprofit organization;

(4) an attorney licensed in New Mexico HGEIC→, ←HGEIC or the attorney's employee HGEIC→ working under the direct supervision of the attorney, ←HGEIC conducting private investigations while engaged in the practice of law;

(5) an officer or employee of the United States or this state or a political subdivision of the United States or this state while that officer or employee is engaged in the performance of the officer's or employee's official duties;

(6) a person engaged exclusively in the business of obtaining and furnishing information concerning the financial rating of persons;

(7) a charitable philanthropic society or association duly incorporated under the laws of this state that is organized and maintained for the public good and not for private profit;

(8) a licensed collection agency or an employee of the agency while acting within the scope of employment while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or the debtor's property;

(9) admitted insurers, adjusters, agents and insurance brokers licensed by the state performing duties in

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connection with insurance transactions by them; or

(10) an institution subject to the jurisdiction of the director of the financial institutions division of the department or the comptroller of currency of the United States.

C. A private investigator licensed in New Mexico shall not offer or provide traffic crash reconstruction in New Mexico unless the private investigator has successfully completed a traffic crash reconstruction course

~~referenced by the department of transportation~~

approved by rule of the department . A

person, other than a certified and commissioned law enforcement officer ~~or a New Mexico professional engineer~~ , who wishes to offer or provide traffic crash reconstruction in New Mexico must be licensed as a private investigator and meet the requirements of this subsection.

D. Skip tracing in New Mexico shall be offered or provided only by:

(1) an employee of a New Mexico state or local law enforcement agency;

(2) a private investigator; or

(3) an attorney licensed to practice in New Mexico or the attorney's employee ~~working under the direct supervision of the attorney~~ ."

SECTION 3. Section 61-27B-5 NMSA 1978 (being Laws 1993,

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Chapter 212, Section 5, as amended) is amended to read:

"61-27B-5. ADMINISTRATION OF ACT--RULES.--

A. The department shall enforce and administer the provisions of the Private Investigations Act in accordance with the Uniform Licensing Act.

B. The department shall keep a record of each individual licensee.

C. The department shall promulgate rules in accordance with the State Rules Act and enforce those rules necessary to carry out the provisions of the Private Investigations Act, including establishing professional ethical standards.

D. The department shall promulgate rules regarding:

(1) licensing private investigators, private investigations managers, private investigation companies, private patrol operators, private patrol operations managers, private patrol employees and polygraph examiners;

(2) registering private investigations employees, security guards, [~~and~~] private patrol employees and instructors;

(3) establishing minimum training and educational standards for licensure and registration;

(4) establishing continuing education requirements;

(5) establishing and operating a branch office;

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(6) creating a policy on reciprocity with other licensing jurisdictions of the United States;

(7) providing permits for security guards for special events; and

(8) conducting background investigations."

SECTION 4. Section 61-27B-7 NMSA 1978 (being Laws 1993, Chapter 212, Section 6, as amended) is amended to read:

"61-27B-7. REQUIREMENTS FOR PRIVATE INVESTIGATOR LICENSURE.--

A. The department shall issue a license as a private investigator to an individual who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant has met all requirements set forth by the department in rule, including that the applicant:

(1) is at least twenty-one years of age;

~~[(2) is of good moral character;~~

~~(3)]~~ (2) has successfully passed an examination as required by department rule;

~~[(4)]~~ (3) has not been convicted of a felony offense, an offense involving dishonesty or an offense involving an intentional violent act or the illegal use or possession of a deadly weapon and has not been found to have violated professional ethical standards as defined by the department; and

~~[(5)]~~ (4) has at least three years' experience

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that has been acquired within the five years preceding the filing of the application with the department of actual work performed in:

(a) investigation for the purpose of obtaining information with reference to a crime or wrongs done or threatened against the United States;

(b) investigation of persons;

(c) the location, disposition or recovery of lost or stolen property;

(d) the cause or responsibility for fire, losses, motor vehicle or other accidents or damage or injury to persons or property; or

(e) securing evidence to be used before a court, administrative tribunal, board or investigating committee or for a law enforcement officer.

B. Years of qualifying experience and the precise nature of that experience shall be substantiated by written certification from employers and shall be subject to independent verification by the department as it deems warranted. The burden of proving necessary experience is on the applicant."

SECTION 5. A new section of the Private Investigations Act is enacted to read:

"[NEW MATERIAL] REQUIREMENTS FOR REGISTRATION AS INSTRUCTOR--CURRICULUM APPROVAL--FIREARMS TRAINING.--

A. Every individual seeking to register as an

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instructor shall complete an application on a form provided by the department and submit the required application fee. The application shall include:

(1) fingerprints and other information for a state and federal criminal history background check submitted in accordance with rules of the department;

(2) proof of instructor certification issued by a law enforcement academy, federal government entity, the military or the federal law enforcement training centers or one year of verifiable training experience or the equivalent to be reviewed and recommended by the private investigations advisory board and approved by the department;

(3) proof of further qualifying training specific to advanced levels of training the instructor is applying for as provided by rule of the department; and

(4) any other information sought by the department.

B. The department shall register each successful instructor applicant.

C. A level two or level three registered instructor may teach individuals who are seeking licensure as a level one security guard. A registered instructor shall not teach above the instructor's registration level. The department may suspend, revoke or refuse to renew the registration of an instructor who teaches above the instructor's registration level.

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D. If a level three instructor offers firearms certification, the instructor shall provide proof of the instructor's current firearms certification to the department.

E. The department shall approve the curriculum for level one, two and three security guard training. The private investigations advisory board shall review curricula submitted for approval and make recommendations to the department for final action.

F. The registration of an instructor registered with the department on the effective date of this section shall remain in effect until renewal unless the department suspends, revokes or refuses to renew the registration."

SECTION 6. Section 61-27B-8 NMSA 1978 (being Laws 2007, Chapter 115, Section 8) is amended to read:

"61-27B-8. PRIVATE INVESTIGATION COMPANY--REQUIREMENTS FOR LICENSURE.--

A. The department shall issue a license for a private investigation company to a person that files a completed application accompanied by the required fees and that submits satisfactory evidence that the applicant:

~~[(1) if an individual, is of good moral character; or if a legal business entity, the owners, officers or directors of the entity are of good moral character;~~

~~(2)]~~ (1) if an individual, has not been convicted of a felony offense, an offense involving dishonesty, an offense involving an intentional violent act or the illegal

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use or possession of a deadly weapon and has not been found to have violated professional ethical standards; or if a legal business entity, the owners, officers or directors of the entity, either singly or collectively, have not been convicted of a felony offense or an offense involving intentional violent acts or the illegal use or possession of deadly weapons and have not been found to have violated professional ethical standards;

~~[(3) maintains a surety bond in the amount of ten thousand dollars (\$10,000); however, private investigators who provide personal protection or bodyguard services shall maintain general liability insurance as specified in the Private Investigations Act in lieu of the surety bond required by the provisions of this paragraph;~~

~~(4)]~~ (2) has an owner or a licensed private investigations manager who is licensed as a private investigator and who manages the daily operations of the private investigation company;

~~[(5)]~~ (3) maintains a physical location in New Mexico where records are maintained and made available for department inspection;

~~[(6)]~~ (4) maintains a New Mexico registered agent if the applicant is a private investigation company located outside of New Mexico; and

~~[(7)]~~ (5) meets all other requirements set forth in the rules of the department.

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B. ~~[The owner or the chief executive officer of]~~ A private investigation company ~~[that provides personal protection or bodyguard services]~~ shall maintain a general liability certificate of insurance in an amount required by the department. The department shall suspend the license issued pursuant to this section of a private investigation company that fails to maintain an effective general liability certificate of insurance as required. The department shall not reinstate the license of a private investigation company that has had its license suspended pursuant to this subsection until an application is submitted to the department with the necessary fees and a copy of the private investigation company's general liability certificate of insurance in effect. The department may deny an application for reinstatement of a private investigation company's license, notwithstanding the applicant's compliance with this subsection for:

(1) a reason that would justify a denial to issue a new private investigation company license or that would be cause for a suspension or revocation of a private investigation company's license; or

(2) the performance by the applicant of an act requiring a license issued pursuant to the Private Investigations Act while the applicant's license is under suspension for failure to maintain the applicant's general liability certificate of insurance in effect."

SECTION 7. Section 61-27B-14 NMSA 1978 (being Laws 2007,

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Chapter 115, Section 14) is amended to read:

"61-27B-14. PRIVATE INVESTIGATIONS OR PRIVATE PATROL
EMPLOYEE--REGISTRATION--REQUIREMENTS.--

A. [~~On or after July 1, 2007~~] Every individual who seeks employment or is currently employed as a private investigations employee or who provides services on a contract basis to a private investigation company shall file an application for registration as a private investigations employee with the department.

B. Every individual who seeks employment as or is currently employed as a private patrol employee or who provides services on a contract basis to a private patrol company shall file an application for registration as a private patrol employee with the department.

~~[B.]~~ C. The department shall issue a registration for a private investigations or private patrol employee to an individual who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

- (1) is at least twenty-one years of age;
- ~~[(2) is of good moral character;~~
- ~~(3)]~~ (2) possesses a high school diploma or its equivalent;
- ~~[(4)]~~ (3) has successfully completed an examination as required by department rule;
- ~~[(5)]~~ (4) has not been convicted of a felony

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involving an intentional violent act or the illegal use or possession of a deadly weapon and has not been found to have violated professional ethical standards;

[~~(6)~~] (5) shall be employed by, or shall contract with a private investigation company to provide investigation services for, a private investigation company, under the direct control and supervision of a private investigator or shall be employed by, or shall contract with a private patrol company to provide private patrol services for, a private patrol company under the direct control and supervision of a private patrol operations manager or a level three security guard, as applicable; and

[~~(7)~~] (6) meets other requirements set forth in rules of the department.

[~~(6)~~] D. If the contract or employment of a private investigations employee with a private investigation company or a private patrol employee with a private patrol company terminates for any reason, the registration of the individual as a private investigations employee or private patrol employee immediately terminates. The private investigations employee or private patrol employee shall turn over the employee's registration to the private investigation company or private patrol company upon ceasing employment with that company.

[~~(D)~~] E. A private investigation company or private patrol company shall notify the department within thirty days from the date of termination of employment of a private

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investigations employee or private patrol employee, as applicable, of the employment termination and return the employee's registration to the department."

SECTION 8. Section 61-27B-18 NMSA 1978 (being Laws 2007, Chapter 115, Section 18) is amended to read:

"61-27B-18. SECURITY GUARD--LEVEL THREE--REGISTRATION--REQUIREMENTS.--

A. [~~On or after July 1, 2007~~] Every individual seeking employment or employed as a level three security guard shall file an application for registration with the department.

B. The department shall issue a registration for a level three security guard to an individual who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

- (1) is at least twenty-one years of age;
- (2) meets the requirements to be granted registration as a level two security guard and maintains in good standing a current registration as a level two security guard;
- (3) has successfully completed an examination as required by department rule;
- (4) possesses a high school diploma or its equivalent;
- (5) in addition to the training required to be registered as a level two security guard and before the applicant shall be placed for the first time at a guard post as

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a level three security guard, has completed a curriculum approved by the department consisting of the minimum training for firearm certification prescribed by the department; provided that the additional training required by the department is provided by:

(a) a public educational institution in New Mexico or an educational institution licensed by the higher education department pursuant to the Post-Secondary Educational Institution Act;

(b) an in-house training program provided by a licensed private patrol company using a curriculum approved by the department;

(c) the New Mexico law enforcement academy; or

(d) any other department-approved educational institution using a curriculum approved by the department and complying with department standards set forth in department rules;

(6) is firearm certified by the New Mexico law enforcement academy or the national rifle association;

(7) is employed by a private patrol company under the direct supervision of a licensed private patrol operator, another level three security guard or a private patrol operations manager; and

~~[(8) beginning on July 1, 2009, has successfully passed a psychological evaluation as prescribed by~~

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~~the department to determine suitability for carrying firearms;~~
and

~~(9)~~ (8) meets other requirements set forth in department rules.

C. A private patrol company shall notify the department within thirty days from the date of termination of a level two security guard of the employment termination."

SECTION 9. Section 61-27B-20 NMSA 1978 (being Laws 2007, Chapter 115, Section 20, as amended) is amended to read:

"61-27B-20. FEES.--~~[A.]~~ Except as provided in Section 61-1-34 NMSA 1978, the department shall establish a schedule of reasonable fees as follows:

~~(1)~~ A. private investigator fees:

~~(a)~~ (1) application fee, not to exceed one hundred dollars (\$100);

~~(b)~~ (2) initial private investigator's license fee or license renewal fee, not to exceed three hundred dollars (\$300); and

~~(c)~~ (3) initial private investigations manager license fee or license renewal fee, not to exceed two hundred dollars (\$200);

~~(2)~~ B. private patrol operator fees:

~~(a)~~ (1) application fee, not to exceed one hundred dollars (\$100);

~~(b)~~ (2) initial private patrol operator's license fee or license renewal fee, not to exceed three hundred

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dollars (\$300); and

[~~(e)~~] (3) initial private patrol operations manager license fee or license renewal fee, not to exceed two hundred dollars (\$200);

C. private investigations employee or private patrol employee, initial registration fee or registration renewal fee, not to exceed one hundred dollars (\$100);

D. private investigation company or private patrol company, initial license fee or renewal license fee, not to exceed three hundred dollars (\$300);

[~~(3)~~] E. security guard fees:

[~~(a)~~] (1) level one or level two security guard registration fee or registration renewal fee, not to exceed fifty dollars (\$50.00); and

[~~(b)~~] (2) level three security guard registration fee or registration renewal fee, not to exceed seventy-five dollars (\$75.00);

[~~(4)~~] F. polygraph examiners:

[~~(a)~~] (1) application fee, not to exceed one hundred dollars (\$100);

[~~(b)~~] (2) initial polygraph examiner's license fee or license renewal fee, not to exceed four hundred dollars (\$400); and

[~~(e)~~] (3) examination fee, not to exceed one hundred dollars (\$100); [~~and~~]

G. instructors:

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(1) application fee, not to exceed one hundred dollars (\$100); and

(2) initial registration or registration renewal, not to exceed one hundred dollars (\$100); and

[~~(5)~~] H. other fees applying to private investigators, private patrol operators, [~~and~~] polygraph examiners and instructors:

[~~(a)~~] (1) change in license fee, not to exceed two hundred dollars (\$200);

[~~(b)~~] (2) late fee on license or registration renewals, not to exceed one hundred dollars (\$100);

[~~(c)~~] (3) special event permit fee, not to exceed one hundred dollars (\$100); and

[~~(d)~~] (4) special event license fee for a private patrol company, not to exceed fifty dollars (\$50.00).

~~[B. Fees charged by the department shall not be increased prior to fiscal year 2009.]"~~

SECTION 10. Section 61-27B-21 NMSA 1978 (being Laws 2007, Chapter 115, Section 21) is amended to read:

"61-27B-21. LICENSE AND REGISTRATION RENEWAL.--

A. A license or registration granted pursuant to the provisions of the Private Investigations Act shall be renewed by the department [~~annually~~] biennially unless the term of the license is set by the department in rule to be a longer period.

B. A licensee or registrant with an expired license

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or registration shall not perform an activity for which a license or registration is required pursuant to the Private Investigations Act until the license or registration has been renewed or reinstated.

C. The department may require proof of continuing education credits or other proof of competency as a requirement of renewal or reinstatement of a license or registration.

D. A license or registration issued to a person pursuant to the Private Investigations Act shall not be transferred or assigned."

SECTION 11. Section 61-27B-24 NMSA 1978 (being Laws 1993, Chapter 212, Section 11, as amended) is amended to read:

"61-27B-24. [~~BOND REQUIRED~~] LIABILITY INSURANCE.--

~~[A. A private investigation company shall file with the department a surety bond in the amount of ten thousand dollars (\$10,000) executed by a surety company authorized to do business in this state.~~

~~B. The owner or the chief executive officer of] A private investigation company [that provides personal protection or bodyguard services or the owner or the chief executive office of] or a private patrol company shall maintain a general liability certificate of insurance in an amount required by the department.~~

~~[C. A surety bond in the amount of ten thousand dollars (\$10,000) or a general liability certificate of insurance executed and filed with the department pursuant to~~

~~the Private Investigations Act shall remain in force until the surety company issuing the bond or the certificate has terminated future indemnity by notice to the department.]"~~

SECTION 12. Section 61-27B-31 NMSA 1978 (being Laws 2007, Chapter 115, Section 31) is amended to read:

"61-27B-31. FIREARMS.--A private investigator, a private patrol operator, a private investigations employee, a level three security guard or a private patrol [~~operations~~] employee may carry a firearm upon successful completion of [~~the~~] mandatory firearm training required by rules of the department and successfully passing a psychological evaluation prescribed by the department to determine suitability for carrying a firearm."

SECTION 13. Section 61-27B-36 NMSA 1978 (being Laws 2007, Chapter 115, Section 35, as amended) is amended to read:

"61-27B-36. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The private investigations advisory board is terminated on July 1, [~~2023~~] 2029 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Private Investigations Act until July 1, [~~2024~~] 2030. Effective July 1, [~~2024~~] 2030, Chapter 61, Article 27B NMSA 1978 is repealed."

SECTION 14. REPEAL.--Section 61-27B-35 NMSA 1978 (being Laws 2007, Chapter 115, Section 36) is repealed.

SECTION 15. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2023.

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