

MAINE STATE LEGISLATURE

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New Draft of: H. P. 199, L. D. 260
(New Title)

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1889

H. P. 1741

House of Representatives, June 21, 1977

Reported by Mr. Cote from the Committee on Legal Affairs and printed
under Joint Rules No. 2.

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

**AN ACT to Reform the Regulation of Watch, Guard and Patrol Agencies
and of Private Detectives.**

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 32 MRSA c. 54 is enacted to read:

CHAPTER 54

PRIVATE SECURITY GUARDS

§ 3761. Definitions

As used in this chapter, unless a different meaning is clearly required by the context, the following terms shall have the following meanings.

1. Armored car service. "Armored car service" means that service provided by any person transporting or offering to transport, under armed security guard, from one place or point, currency, jewels, stocks, bonds, paintings or other valuables in a specially equipped motor vehicle which offers a high degree of security.

2. Branch office. "Branch office" means any office of a licensee within the State other than its principal place of business.

3. Commissioner. "Commissioner" means the Commissioner of Public Safety.

4. Contract security company. "Contract security company" means any organization engaged in the business of providing, or which undertakes to

provide, a security guard as defined in this section on a contractual basis for another person.

5. Licensee. "Licensee" means any person to whom a license is granted in accordance with this chapter.

6. Licensing authority. "Licensing authority" means the Commissioner of Public Safety.

7. Person. "Person" includes any individual, firm, association, company, partnership, corporation, nonprofit organization, institution or similar entity.

8. Principal corporate officer. "Principal corporate officer" means the president, vice-president, treasurer, secretary and comptroller, as well as any other person who performs functions for the corporation corresponding to those performed by the other officers defined in this section.

9. Proprietary security organization. "Proprietary security organization" means any organization or department of that organization which provides full-time security guards, as defined in this section, solely for itself.

10. Security guard. "Security guard" means an individual employed by the holder of a license issued pursuant to this chapter to principally perform any of the following functions:

- A. Protection of individuals or property from harm or theft of property of any kind;
- B. Prevention, observation or detection of any unauthorized activity on private property;
- C. Prevention of unlawful intrusion or entry, larceny, vandalism, abuse, arson or trespass on private property;
- D. Control, regulate or direct the flow or movements of the public, whether by vehicle, on foot or otherwise;
- E. Street patrol service; or
- F. Armored car service.

11. Security system. "Security system" means equipment designed to detect or signal an unauthorized intrusion so that security guards are expected to respond.

12. Street patrol service. "Street patrol service" means any contract security company or proprietary security organization utilizing foot patrols, motor vehicles or any other means of transportation on public thoroughfares as security guards.

§ 3762. Licensing authority; established

1. Authority. The Commissioner of Public Safety shall have the authority to promulgate rules and regulations which are reasonable, proper and necessary to carry out the functions of the licensing of watch, guard and patrol agencies and to enforce the provisions of this chapter. The commis-

sioner shall also establish procedures for the preparation and processing of applications, license certificates, identification cards, renewals, appeals, hearings, rule-making proceedings, and to determine whether or not the qualifications of licensees and security guards are consistent with this chapter.

2. Petition. Any interested person may petition the Commissioner of Public Safety to enact, amend or repeal any rule or regulation within the scope of subsection 1. The commissioner shall prescribe, by rule, the form for such petitions and procedures for their submission, consideration and disposition.

3. Rules and regulations reviewed by the Legislature. Each rule and regulation promulgated by the commissioner shall be reviewed by the Legislature at the earliest opportunity and approved or disapproved by joint resolution.

§ 3763. Subpoenas; oaths; contempt powers

1. Subpoenas and oaths. In any investigation conducted under this chapter, the Commissioner of Public Safety may issue subpoenas to compel the attendance of witnesses and the production of relevant books, accounts, records and documents. The officer conducting a hearing may administer oaths and may require testimony or evidence to be given under oath.

2. Petition. If a witness refuses to obey a subpoena or to give any evidence relevant to proper inquiry by the commissioner, the commissioner may petition the District Court to compel the witness to obey the subpoena or to give the evidence. The court shall promptly issue process to the witness and shall hold a hearing on the petition as soon as possible. If the witness then refuses, without reasonable cause or legal grounds, to be examined or to give any evidence relevant to proper inquiry by the commissioner, the court may cite the witness for contempt.

§ 3764. Public notice of proposed rule-making

The Commissioner of Public Safety shall, prior to the adoption of any rule or regulation or the amendment or repeal thereof, notify all licensees within the State and publish a notice of the proposed action in the state paper. He shall also give publicity to the proposal in such other manner as he regards appropriate. He shall afford interested persons an opportunity to submit, within a reasonable time, data and views either orally or in writing, in a manner prescribed under his authority. This notice shall include:

1. Statement of the time, place and nature. A statement of the time, place and nature of the public rule-making proceedings;

2. Reference to the authority. Reference to the authority under which the rule-making is proposed; and

3. Terms or substance. Either the terms or substance of the proposed rule-making or a description in reasonable detail of the subjects and issues involved.

The publication or service of any notice required by this section shall be made not less than 30 days prior to the effective date of the proposed adoption, amendment or repeal of the rule or regulation, except as otherwise provided by the Commissioner of Public Safety upon good cause found and published with the notice.

§ 3765. Requirement for contract security company license

1. Establishment of security company or organization without license unlawful. It shall be unlawful and punishable as provided in section 3779 for any person to engage in the business of a contract security company without having first obtained a license from the Commissioner of Public Safety.

2. Time to apply for license. On the effective date of this chapter, every person required to have a license shall have 60 days to apply to the Commissioner of Public Safety for this license. Any such person filing a timely application may continue to engage in security guard activities pending a final determination of such application.

§ 3766. Form of application

Applications for licenses required by this chapter shall be filed with the Commissioner of Public Safety on a form provided by the commissioner. If the applicant is an individual, the application shall be subscribed and sworn to by such person. If the applicant is a partnership, the application shall be subscribed and sworn to by each partner. If the applicant is an individual and does not reside, operate any business or is not employed within the State, or in the event the applicant is a firm or partnership and no owner or general partner resides, operates a business or is employed within the State, then the application must also be subscribed and sworn to by the qualifying agent. If the applicant is a corporation, the application shall be subscribed and sworn to by at least one principal officer of the corporation. If the applicant is a corporation and none of its principal officers are responsible for the management and operations of the business within the State, the application shall also be subscribed and sworn to by the qualifying agent.

§ 3767. License qualifications

1. Qualifications. Every applicant, or in the case of a partnership each partner, or in the case of a corporation the qualifying agent, shall meet the following qualifications before he may engage in the business of a contract security company. He must:

- A. Be at least the age of majority;
- B. Be a citizen of the United States or a resident alien;
- C. Not have been declared, by any court of competent jurisdiction, incompetent by reason of mental illness or incapacity and not have been restored;
- D. Not have been discharged from the Armed Services of the United States under dishonorable conditions, unless that discharge has been vacated; and

E. Be of good moral character.

2. Corporation; Secretary of State to issue certificate of authority. A corporation seeking a license shall be incorporated under the laws of this State or shall be duly qualified to do business within this State with a valid certificate of authority issued by the Secretary of State and an agent for service of process as required by law.

3. Nonresident. Any other nonresident person or organization seeking a license shall designate the Secretary of State or other authorized person as an agent for service of process as required by law.

§ 3768. License application; investigation

After receipt of an application for a license, the Commissioner of Public Safety shall conduct an investigation to determine whether the facts set forth in the application are true.

§ 3769. Grounds for denial of application

The Commissioner of Public Safety may deny the application for a license if he finds that the applicant or the qualifying agent or any of the applicant's owners, partners or principal corporate officers have:

1. Violation. Violated any of this chapter or the rules and regulations promulgated hereunder;

2. Misstatement. Knowingly made a material misstatement in the application for a license; or

3. Not met qualifications. Not met the qualifications of section 3767, subsection 1.

§ 3770. Procedure for approval or denial of application; hearings

1. Application. The procedure of the Commissioner of Public Safety in approving or denying an application shall be as follows:

A. If the application is approved, the commissioner shall notify the applicant in writing that a license will be issued. Such notification shall state that the license so issued will expire in one year unless renewed in accordance with sections 3771 and 3772 and shall set forth the time within which application for renewal shall be made; or

B. If the application is denied, the commissioner shall notify the applicant in writing and shall set forth the grounds for denial. If the grounds for denial are subject to correction by the applicant, the notice of denial shall so state and the applicant shall be given 10 days after receipt of such notice, or upon application, a reasonable additional period of time within which to make the required correction.

2. Hearing upon denial. If the application is denied, the applicant may, within 30 days after receipt of notice of denial from the Commissioner of Public Safety, request a hearing on the denial. Within 10 days after the filing of the request for hearing by the applicant, the commissioner shall schedule

a hearing to be held before him or an officer designated by him after due notice to the applicant. The hearing shall be held within 15 days after the notice is mailed to the applicant, unless postponed at the request of the applicant. The applicant shall have the right to make an oral presentation at the hearing, including the right to present witnesses and to confront and cross-examine adverse witnesses. Applicants may be represented by counsel. If the hearing is held before a hearing officer, the officer shall submit his report in writing to the commissioner within 10 days after the hearing. The commissioner shall issue his decision within 10 days after the hearing or within 10 days after receiving the report of the hearing officer. The decision of the commissioner shall be in writing and shall set forth his findings and conclusions. A copy of his findings and conclusions shall be promptly mailed to the principal office of the applicant within the State.

§ 3771. Renewal of license

Each license shall expire one year after its date of issuance. Application for renewal of a license shall be received by the Commissioner of Public Safety on a form provided by the commissioner no less than 30 days prior to the expiration date of the license, subject to the right of the commissioner to permit late filing upon good cause shown up to 2 months after the license expiration date. The commissioner may refuse to renew a license for any of the grounds set forth in section 3774, subsection 1, and he shall promptly notify the licensee of his intent to refuse to renew the license. The licensee may, within 15 days after receipt of such notice of intent to refuse to renew a license, request a hearing on such refusal in the manner prescribed by section 3774, subsection 2. A licensee shall be permitted to continue to engage in security guard activities while his renewal application is pending.

§ 3772. Application; license and renewal fees

1. Application fee. The fee for a license application shall be \$200.
2. Renewal license fee. The fee for a license renewal shall be \$100.
3. Refund. Initial license application fees shall not be refundable, but if a license renewal application is denied, the fee shall be refunded.
4. Expiration. If a previously issued license has expired and has not been renewed within a period of 60 days, such application shall be considered the original application and the same fees and all requirements of an original application shall apply.
5. Expenses. The fees received under this chapter shall be applied to the expense of administering this chapter.

§ 3773. License transferability

1. Transfer. No license issued pursuant to this chapter shall be assigned or transferred either by operation of law or otherwise.
2. Death of licensee. If the license is held by an owner other than a corporation and such owner dies, becomes disabled or otherwise ceases to engage in the business, the successor, heir, devisee or personal representative

of such owner shall, within 60 days of the death, disablement or other termination of operation by the original licensee, apply for a license on a form prescribed by the Commissioner of Public Safety. The form shall include the same general information required by section 3766. The transferee shall be subject to the same general requirements and procedures set forth in sections 3767 to 3771 to the extent such sections are applicable.

3. Filing. For good cause, the commissioner may extend the period of filing the application required by subsection 2.

§ 3774. License revocation; hearings; appeals; notices

1. Revocation. Licenses may be revoked by the Commissioner of Public Safety in the manner hereinafter set forth if the licensee or any owners, partners, principal corporate officers or qualifying agents are:

A. Found to have violated any of the provisions of this chapter or any rule or regulation set by the commissioner, which violation the commissioner determines to reflect unfavorably upon the fitness of the licensee to engage in security guard activities;

B. Found to have knowingly and willfully given any false information of a material nature in connection with an application for a license or a renewal or reinstatement of a license or in a notice of transfer of a business licensed under this chapter;

C. Found to have been convicted in any jurisdiction of a crime if the commissioner determines that such conviction reflects unfavorably on the fitness of the applicant to engage in security guard activities; or

D. Found to have committed any act while the license was not in effect which would be cause for the revocation of a license or grounds for denial of an application for a license.

2. Notice. Prior to revocation of a license, the Commissioner of Public Safety shall promptly notify the licensee of his intent to issue an order of revocation, setting forth in reasonable detail the grounds for revocation. Within 30 days of receipt of notice of intent to revoke from the commissioner, the licensee may request a hearing. Within 10 days after the filing of a request for a hearing by the licensee, the commissioner shall, upon due notice to the licensee, schedule a hearing to be held before the commissioner or an officer designated by the commissioner. The hearing shall be held within 15 days after the notice is mailed to the licensee, unless postponed at the request of the licensee. The licensee shall have the right to make an oral presentation at the hearing, including the right to present witnesses and to confront and cross-examine adverse witnesses. The licensee may be represented by counsel. If the hearing is held before a hearing officer, the officer shall submit his report in writing to the commissioner within 10 days after the hearing. The commissioner shall issue his decision within 10 days after the hearing or within 10 days after receiving the report of the hearing officer. The decision of the commissioner shall be in writing and shall set forth the commissioner's findings and conclusions. A copy thereof shall be promptly mailed to the principal office of the licensee within the State.

3. **Receipt of final notice.** Within 90 days after the licensee has exhausted all rights of appeal under this chapter, or if the licensee does not seek a hearing after receipt of a notice of intent to revoke from the commissioner, within 60 days after receipt of the notice of intent to revoke, the licensee shall notify all of his clients within the State of such revocation and maintain in his records a copy of the notices. The licensee shall cease to perform any services for which he has been licensed under this chapter within 60 days of his receipt of the final notice of intent to revoke from the commissioner.

4. **Extension.** Under circumstances in which the commissioner determines that the public health, welfare or safety may be jeopardized by the termination of a licensee's services, the commissioner may, upon his own motion, or upon application by the licensee or any party affected by the termination, extend the time for the termination of the licensee's operations, subject to such reasonable, necessary and proper conditions or restrictions as he deems appropriate.

5. **Consent order.** After the commissioner has issued a notice of intent to revoke a license, the licensee may request that he be permitted to continue to operate subject to the terms of a written order of consent issued by the commissioner, requiring the licensee to correct the conditions set forth as grounds for revocation in the notice of intent to revoke and imposing reasonable conditions and restrictions on the licensee in the conduct of his business. The commissioner may in his sole discretion grant or deny such a request and may stay or postpone any proceeding being conducted pursuant to subsection 2. Negotiations for such an order of consent may be requested at any time during revocation proceedings and stay of pending proceedings during such negotiations shall be within the sole discretion of the commissioner. If revocation proceedings are before a court and the commissioner and licensee have agreed upon the terms of a proposed consent order, the commissioner shall submit the proposed order to the court which may approve or disapprove the proposed order or require modification of the proposed consent order before approval.

6. **Failure to comply.** The commissioner shall enact reasonable rules and regulations for determination of whether the licensee has complied with a consent order issued pursuant to subsection 5. If the commissioner determines that the licensee has failed to comply, he may revoke the order and conduct proceedings for revocation of the license. If the consent order has been approved by a court, then the commissioner shall petition such court for vacation of the order. The court shall hold a hearing to determine if the order should be vacated. If the court vacates the consent order, the commissioner may conduct proceedings for revocation of the license.

§ 3775. Form of license and posting

1. **Form.** The license, when issued, shall be in a form prescribed by the Commissioner of Public Safety.

2. **Posting.** Within 72 hours after receipt of the license certificate, the licensee shall cause such license certificate to be posted and to be displayed at all times in a conspicuous place in the principal office of the licensee within

the State and copies thereof shall be displayed at all times in any other offices within the State where the licensee transacts business with his customers, so that all persons visiting such place or places may readily see the license. These license certificates or copies thereof shall be subject to inspection at all reasonable times by the Commissioner of Public Safety.

3. Unlawful posting; surrender. It shall be unlawful for any person holding such license certificate to knowingly and willfully post such license certificate or permit such license certificate to be posted upon premises other than those described in the license certificate or to knowingly and willfully alter such license certificate. Each license certificate shall be surrendered to the commissioner within 72 hours after it has been revoked or after the licensee ceases to do business, subject to section 3774, subsections 4 and 5. If the commissioner or a court of competent jurisdiction has pending before it any matter relating to the renewal, revocation or transfer of a license, the licensee shall not be required to surrender the license until the matter has been adjudicated and all appeals have been exhausted. When the licensee receives final notice that his license has been revoked, a copy of such notice shall be displayed and posted in close proximity to the license certificate until the licensee terminates his operations.

§ 3776. Change in status of licensee

The licensee shall notify the Commissioner of Public Safety within 30 days of any change in his qualifying agent, officers or directors or material change in the information previously furnished or required to be furnished to the commissioner or any occurrence which could reasonably be expected to affect the licensee's right to a license under this chapter.

§ 3777. Uniforms and equipment

1. Handguns. All handguns worn by a uniformed security guard shall be worn in a holster in an open and fully-exposed manner.

2. Badges. No individual while performing security guard services shall wear or display any badge, insignia, device, shield, patch or pattern which shall indicate or tend to indicate that he is a sworn peace officer, or which contains or includes the words "police" or the equivalent thereof, or is similar in wording to any law enforcement agency.

3. Vehicles. No person shall, while performing any security guard services, have or utilize any vehicle or equipment displaying the words "police," "law enforcement officer" or the equivalent thereof, or have any sign, shield, marking accessory or insignia that may indicate that such vehicle is a vehicle of a public law enforcement agency.

§ 3778. Bonding requirements

Each person licensed under this chapter shall give to the commissioner a bond in the sum of either \$10,000 if a resident or \$50,000 if a nonresident. All such bonds shall be executed by the licensee as principal and by a surety company authorized to do business as such in this State as surety. Each bond shall be in such form as the Commissioner of Public Safety may prescribe,

conditioned upon the honest conduct of the business of the licensee and the right of any person, including the officer of any aggrieved labor union or association whether or not incorporated, injured by the willful, malicious, wrongful or negligent act of the licensee to bring, in his own name, an action on the bond.

§ 3779. Unlawful acts

1. Offenses. It shall be unlawful for any person to knowingly commit any of the following :

- A. Provide security guard services without possessing a valid license ;
- B. Publish any advertisement, letterhead, circular, statement or phrase of any kind which suggests that the licensee is an official police agency or any other agency, instrumentality or division of this State, or any of its political subdivisions, or of the Federal Government ;
- C. Falsely represent that a person is or was in his employ as a licensee or as a security guard ; or
- D. Knowingly make any false statement or material omission in any application filed with the commissioner.

2. Security guard offenses. It shall be unlawful for any security guard to knowingly commit any of the following :

- A. Fail to return immediately on demand, or within 7 days of termination of employment, any uniform, badge or other item of equipment issued to the security guard by an employer ;
- B. Make any statement which would reasonably cause another person to believe that he is a sworn peace officer or other official of this State or of any of its political subdivisions or agency of the Federal Government ;
- C. Fail to comply with the regulations issued by the Commissioner of Public Safety or with any other requirements of this chapter ; or
- D. Divulge to anyone other than the licensee by which employed, or as such licensee shall direct or expect as may be required by law, any information acquired during such employment in respect to any of the work to which he shall have been assigned by such licensee.

3. Class of crime. The violation of any of this section, unless the crime is otherwise specified, shall constitute a Class D crime. The commissioner shall also be authorized to suspend or revoke a license issued under this chapter, to establish by regulation a reasonable fine schedule and to take any other action deemed appropriate under this chapter.

§ 3780. Prohibited activities in connection with strikes ; labor disputes

1. Prohibitions. No licensee nor any of his employees shall :

- A. Incite, encourage or aid any person who has become a party to any strike to commit any unlawful act against any person or property ;
- B. Incite, stir up, create or aid in the inciting of discontent or dissatisfaction among the employees of any person with the intention of having them strike ;

- C. Interfere with or prevent lawful and peaceful picketing during strikes;
- D. Interfere with, restrain or coerce employees in the exercise of their right to form, join or assist any labor organization of their own choosing;
- E. Interfere with or hinder lawful or peaceful collective bargaining between employers and employees;

F. Pay, offer to give any money, gratuity, consideration or other thing of value, directly or indirectly, to any person for any verbal or written report of the lawful activities of employees in the exercise of their right to organize, form or assist any labor organization and to bargain collectively through representatives of their own choosing;

G. Advertise for, recruit, furnish or replace or offer to furnish or replace for hire or reward, within or outside the State, any skilled or unskilled help or labor, armed guards, other than armed guards theretofore regularly employed for the protection of payrolls, property or premises, for service upon property which is being operated in anticipation of or during the course or existence of a strike;

H. Furnish armed guards upon the highways for persons involved in labor disputes;

I. Furnish or offer to furnish to employers or their agents any arms, munitions, tear gas implements or any other weapons;

J. Send letters or literature to employers offering to eliminate labor unions; or

K. Advise any person of the membership of an individual in a labor organization for the purpose of preventing such individual from obtaining or retaining employment.

2. Penalty. The violation of any of the provisions of this section shall constitute a Class D crime.

§ 3781. Judicial review

Any person aggrieved by any final action of the Commissioner of Public Safety under this chapter shall have the right to review by the Administrative Court.

§ 3782. Part-time and off-duty law enforcement officers

Any person currently employed as a state, county or local law enforcement officer or any constable, either full time or part time, who is bonded in accordance with this chapter and who engages in the activity regulated by this chapter on a part-time or off-duty basis, shall not be required to obtain a license as required by section 3765 when employed by a nonprofit organization.

§ 3783. Severability clause

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions

or application of this chapter which can be given effect without the invalid provision or application.

Sec. 2. 32 MRSA c. 55-A, as enacted by PL 1971, c. 582, § 1 and as last amended by PL 1977, c. 78, § 183, is repealed.

Sec. 3. 32 MRSA c. 79 is enacted to read:

CHAPTER 79 PRIVATE INVESTIGATORS

§ 6051. Definitions

As used in this chapter, the following words shall have the following meanings unless a different meaning is clearly required by context.

1. Commissioner. "Commissioner" means the Commissioner of Public Safety.

2. Investigative assistant. "Investigative assistant" means a person under the direct supervision of the licensee who is undergoing training in investigative activities and assisting the licensee in his work.

3. Licensee. "Licensee" means any person licensed under this chapter.

4. Licensing authority. "Licensing authority" means the Commissioner of Public Safety.

5. Private investigator. "Private investigator" means a person engaged in business as a private detective or investigator, including any person who, for hire, fee, reward or other consideration, engages in the business of making investigations for the purpose of obtaining information with reference to libels, fires, losses, accidents or damage to, or loss or theft of, real or personal property.

6. Polygraph expert. "Polygraph expert" means an expert in the analysis of polygraph test results.

7. Private investigator business. "Private investigator business" means the business of private investigating.

§ 6052. Authority of the Commissioner of Public Safety relating to rules and regulations; petitions

1. Rules and regulations. The authority to promulgate rules and regulations which are reasonable, proper and necessary to carry out the functions of the Commissioner of Public Safety to enforce this chapter, to establish procedures for the preparation and processing of applications, license certificates, registration cards, renewals, appeals, hearings and rule-making proceedings, and to determine the qualifications of licensees and investigative assistants consistent with this chapter are hereby vested in the Commissioner of Public Safety.

2. Right of petition. Any interested person may petition the commissioner to enact, amend or repeal any rule or regulation within the scope of sub-

section 1. The commissioner shall prescribe by rule the form for such petitions and procedures for their submission, consideration and disposition.

3. Rules and regulations reviewed by the Legislature. Each rule and regulation promulgated by the commissioner shall be reviewed by the Legislature at the earliest opportunity and approved or disapproved by joint resolution.

§ 6053. Subpoenas; oaths; contempt powers

1. Subpoenas. In any investigation conducted under this chapter, the commissioner may issue subpoenas to compel the attendance of witnesses and the production of relevant books, accounts, records and documents. The officer conducting a hearing may administer oaths and may require testimony or evidence to be given under oath.

2. Court petition. If a witness refuses to obey a subpoena or to give any evidence relevant to proper inquiry by the commissioner, the commissioner may petition the District Court to compel the witness to obey the subpoena or to give the evidence. The court shall promptly issue process to the witness and shall hold a hearing on the petition as soon as possible. If the witness then refuses, without reasonable cause or legal grounds, to be examined or to give any evidence relevant to proper inquiry by the commissioner, the court may cite the witness for contempt.

§ 6054. Public notice of proposed rule-making

The Commissioner of Public Safety shall, prior to the adoption of any rule or regulation or the amendment or repeal thereof, notify all licensees within the State and publish a notice of the proposed action in the state paper. He shall give publicity to the proposal in such other manner as he regards appropriate and shall afford interested persons an opportunity to submit, within a reasonable time, data and views either orally or in writing, in a manner prescribed under his authority. This notice shall include:

1. Statement of the time, place and nature. A statement of the time, place and nature of the public rule-making proceedings;

2. Reference to authority. Reference to the authority under which the rule-making is proposed; and

3. Terms or substances. Either the terms or substances of the proposed rule-making or a description in reasonable detail of the subjects and issues involved.

The publication or serving of any notice required by this section shall be made not less than 30 days prior to the effective date of the proposed adoption, amendment or repeal of the rule or regulation, as the case may be, except as otherwise provided by the commissioner upon good cause found and published with the notice.

§ 6055. When license required; exceptions; penalties

No person, firm, corporation or other legal entity shall engage in, advertise nor hold himself out as being in, nor solicit private investigation business,

notwithstanding the name or title used in describing such business, unless licensed for such purpose as provided in section 6057. No licensed private investigator or person licensed to engage in the private investigator business may employ or engage any other person to act as a private investigator or engage in the private investigator business unless that person so employed or engaged has qualified as provided in section 6060. For the purposes of this chapter, a polygraph expert shall be considered a private investigator and shall not engage in the practice of his profession unless licensed as a private investigator as provided in section 6057. However, part-time or full-time police officers may act as a polygraph expert without a license while acting in their capacity as a police officer.

This section shall not apply to an agent, employee or assistant of a licensee except as noted in the preceding paragraph with regard to certain persons employed or engaged by any licensed private investigator or licensed private investigator business if its resident manager, superintendent or official representative is a licensee; nor to the following :

1. Government. A person employed by or on behalf of the State, including the Legislature, any committee of the Legislature or either of its branches, any special commission required to report to the Legislature, any political subdivision of the State, or any public instrumentality, while such person is engaged in the discharge of his official duties ;

2. Charitable agency. A charitable, philanthropic or law enforcement agency, duly incorporated under the laws of the State, or any agent thereof, while he is engaged in the discharge of his duties as such agent, provided that such agency is promoted and maintained for the public good and not for private profits ;

3. Employees. A person employed as an investigator or whose duties include an inquiry into the fitness of an applicant for employment in connection with the regular and customary business of his employer and whose services are not let out to another for profit or gain, but only while so acting for his employer ;

4. Credit reporting agency. A credit reporting bureau or agency whose business is principally the furnishing of information as to business and financial standing and credit responsibility ;

5. Personal investigations. Investigations as to the personal habits and financial responsibility of applicants for insurance or indemnity bonds, provided such investigations do not include other activities described in section 6062 ;

6. Attorneys. As attorney-at-law in the practice of his profession ;

7. Statistics. Investigations with respect to, or the compilation or dissemination of, any data or statistics pertaining to any business or industry by any trade or business association, board or organization, incorporated or unincorporated, not operated for profit, representing persons engaged in such business or industry, or by any agent of any such trade or business association while he is engaged in the discharge of his duties as such agent ;

8. Insurance adjuster. An insurance adjuster or investigator while acting in such capacity;

9. Business association. Any trade or business association, board or organization, incorporated or unincorporated, which furnishes, as a service to members thereof, information pertaining to the business and financial standing, credit responsibility or reputation of persons with whom such members consider doing business, provided that an investigation conducted by such association, board or organization shall be no more extensive than is reasonably required to determine the business and financial standing, credit responsibility or reputation of such person;

10. Genealogy. A person engaged in earning his livelihood by genealogical work and the compilation of family history while so engaged; or

11. Prior law. A person, firm, corporation or other legal entity possessing a valid license to engage in the private investigator business under any prior existing provision of law, except that upon the expiration of such licenses as previously required by law such persons shall be governed by this section.

Violation of this section shall constitute a Class D crime.

§ 6056. Application for license

An application for a license to engage in the private investigator business shall be filed with the Commissioner of Public Safety on forms furnished by him and statements of fact therein shall be under oath of the applicant. Such application shall include a certification by each of 3 reputable citizens of the State of Maine residing in the community in which the applicant resides or has a place of business, or in which the applicant proposes to conduct his business, that he has personally known the applicant for at least 3 years, that he has read the application and believes each of the statements made therein to be true, that he is not related to the applicant by blood or marriage and that the applicant is honest and of good moral character. The applicant, or if the applicant is a corporation, its resident manager, superintendent or official representative, shall be at least 18 years of age and of good moral character or shall have been regularly employed for at least one year as a full-time investigative assistant or for not less than one year as a detective doing investigating work, a member of an investigative service of the United States or a police officer of the State of Maine or any political subdivision thereof. The Commissioner of Public Safety shall process such applications and review the applications to assure compliance with the provisions of this section.

§ 6057. Granting of licenses

The Commissioner of Public Safety may grant to an applicant complying with section 6056 a license to engage in the private investigator business. Such license shall be for one year, shall state the name under which the licensed business is to be conducted and the address of its principal office, and shall be posted by the licensee in a conspicuous place in such office. Failure to comply with this section shall constitute cause for revocation of such license. The commissioner may renew and may at any time for cause, after

notice and hearing, revoke any such license. An application for a renewal shall be on a form furnished by the commissioner and the information contained in such application shall be reviewed by the commissioner for continued compliance with section 6056. Application for renewal of license must be received by the commissioner not less than 30 days prior to the expiration date of the license. This limit is subject to the right of the commissioner to permit late filing upon good cause shown up to 2 months after the license expiration date. Prior to the revocation of a license, the licensee is entitled to a fair hearing equivalent to one required in section 3775, subsection 2.

§ 6058. Fees

1. Amount. The fee for an original license shall be \$100 and \$50 for a renewal. Initial license application fees shall not be refundable, but if a license renewal application is denied, the fee shall be refunded.

2. Expiration. If a previously issued license has expired and not been renewed within a period of 60 days, such application shall be considered the original application and the same fees and all requirements of an original application shall apply.

3. Expenses. The fees required under this chapter shall be applied to the expense of administering this chapter.

§ 6059. Bonding requirements

Each person licensed under this chapter shall give to the commissioner a bond in the sum of either \$10,000 if a resident or \$50,000 if a nonresident. All such bonds shall be executed by the licensee as principal and by a surety company authorized to do business as such in this State as surety. Such bond shall be in such form as the commissioner may prescribe, conditioned upon the honest conduct of the business of the licensee and the right of any person, including the officer of any aggrieved labor union or association whether or not incorporated, injured by the willful, malicious, wrongful or negligent act of the licensee to bring, in his own name, an action on the bond.

If a licensee chooses to hire an investigative assistant, each assistant shall be similarly bonded in the amount of \$20,000 and the bond also shall be on file with the commissioner.

§ 6060. Assistant private detective's license; penalty for making false statements or reports or divulging information

1. Employment of assistants.

A. A licensee may employ, to assist him in his business, as many persons as he may deem necessary, except that a licensed person engaged in the private detective business may not employ more than one person to act as a private detective or engage in the private detective business. A person so employed or engaged shall be bonded in the amount of \$20,000 and that bond shall be on file with the Commissioner of Public Safety. The person employed or engaged shall be licensed as an assistant private detective with the Commissioner of Public Safety for a fee of \$150, provided he is a resident of this State and meets all application requirements for a

license to engage in the private detective business, excepting one year's experience as an investigator. A license shall be issued as an assistant private detective for a period of one year, provided the person so licensed shall remain employed by the same licensed private detective for that period.

B. The assistant private detective license may not be renewed. At the end of one year, the licensed assistant private detective may apply for a private detective license in accordance with sections 6056, 6057, 6058 and 6059.

C. No licensee may knowingly employ in connection with this business in any capacity any person who has been convicted of a felony or any former licensee whose license has been revoked.

D. No person shall be employed by any licensee until he shall have executed and furnished to such licensee a statement under oath setting forth his full name, date of birth and residence; his parents' names and places of birth; the business or occupation in which he has been engaged for the 3 years immediately preceding the date of filing his statement; and that he has not been convicted of a felony or of any offense involving moral turpitude. Such statements shall be kept on file by the licensee and furnished to the Commissioner of Public Safety on demand.

2. False statements. If a licensee falsely states or represents that a person is or was in his employ, such false statement or misrepresentation shall be cause for revocation of his license. Whoever falsely states or represents that he has been a licensee or employed by a licensee shall be punished by a fine of not less than \$50 nor more than \$500.

3. Penalty. The violation of any provision of this section, unless the crime is otherwise specified, shall be a Class D crime.

§ 6061. Public officials

Individuals who derive plenary or special law enforcement powers from the State, or employees of the State or any of its political subdivisions, agencies or departments, or of any town, city or plantation, are not eligible for a license under this chapter.

§ 6062. Unlawful acts

1. Offenses. It shall be unlawful for any person to knowingly commit any of the following:

A. Provide private investigator services without possessing a valid license;

B. Make any advertisement, letterhead, circular, statement or phrase of any kind which suggests that the licensee is an official police officer or agency or any other agency, instrumentality or division of this State or any of its political subdivisions, or of the Federal Government;

C. Falsely represent that a person is in his employ as a private investigator or an investigative assistant;

D. Knowingly make any false statement or material omission in any application filed with the commissioner; or

E. Falsely represent that the person is the holder of a valid license.

2. Investigative assistant offenses. It is unlawful for any investigative assistant to knowingly commit any of the following:

A. Fail to return immediately on demand, or within 7 days of termination of employment, any item of employment issued to the investigative assistant by an employer;

B. Make any statement which would reasonably cause another person to believe that the investigative assistant is a sworn peace officer or other official of this State or of any of its political subdivisions or agency of the Federal Government;

C. Fail to comply with the regulations issued by the Commissioner of Public Safety or with any other requirements under this chapter; or

D. Divulge to anyone other than the licensee by which employed, or as such licensee shall direct or expect as may be required by law, any information acquired during such employment in respect to any of the work to which he shall have been assigned by such licensee.

3. Class of crime. The violation of any of the provisions of this section, unless the crime is otherwise specified, shall constitute a Class D crime. The commissioner also be authorized to suspend or revoke a license issued under this chapter, to establish by regulation a reasonable fine schedule and to take any other action deemed appropriate under this chapter.

§ 6063 Prohibited activities in connection with strikes; labor disputes

1. Prohibitions. No licensee nor any of his employees shall:

A. Incite, encourage or aid any person who has become a party to any strike to commit any unlawful act against any person or property;

B. Incite, stir up, create or aid in the inciting of discontent or dissatisfaction among the employees of any person with the intention of having them strike;

C. Interfere with or prevent lawful and peaceful picketing during strikes;

D. Interfere with, restrain or coerce employees in the exercise of their right to form, join or assist any labor organization of their own choosing;

E. Interfere with or hinder lawful or peaceful collective bargaining between employers and employees;

F. Pay, offer to give any money, gratuity, consideration or other thing of value, directly or indirectly, to any person for any verbal or written report of the lawful activities of employees in the exercise of their right to organize, form or assist any labor organization and to bargain collectively through representatives of their own choosing;

G. Advertise for, recruit, furnish or replace or offer to furnish or replace for hire or reward, within or outside the State, any skilled or unskilled help or labor, armed guards, other than armed guards theretofore regularly employed for the protection of payrolls, property or premises, for service upon property which is being operated in anticipation of or during the course of existence of a strike;

H. Furnish armed guards upon the highways for persons involved in labor disputes,

I. Furnish or offer to furnish to employers or their agents any arms, munitions, tear gas implements or any other weapons;

J. Send letters or literature to employers offering to eliminate labor unions; or

K. Advise any person of the membership of an individual in a labor organization for the purpose of preventing such individual from obtaining or retaining employment.

2. Penalty. The violation of any of the provisions of this section shall constitute a Class D crime.

§ 6064. Licensee identification cards

The Commissioner of Public Safety shall design and issue to each licensee a licensee identification card featuring a recent photograph of the licensee. The fee for this card shall be \$2.50.

§ 6065. Judicial review

Any person aggrieved by a final action of the Commissioner of Public Safety under this chapter shall have the right to review by the Administrative Court.

§ 6066. Severability clause

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such holding shall not affect other provisions or applications of this chapter which can be given effect without the involved provision or application.

STATEMENT OF FACT

This bill reforms the regulation of the watch, guard and patrol industry and private detective industry. The main reforms are as follows:

1. It establishes separate chapters for security guard regulation and private investigator regulation;

2. It provides more comprehensive definition of terms;

3. It authorizes the Commissioner of Public Safety to promulgate necessary rules and regulations and improves the public notice requirement of any rule changes initiated by the commissioner and gives the Legislature a mechanism to review any rules promulgated;
4. It makes more explicit the qualifications a licensee applicant must possess;
5. It requires applications for renewal of licenses to be made within 60 days of expiration;
6. Provides a comprehensive notice and appeals process for persons whose license may be revoked;
7. Allows private investigators to hire one assistant private investigator;
8. Assures private security guards or assistant private investigators will not be mistaken for police officers;
9. Increases the bonding requirements;
10. Establishes a list of unlawful Class D crime acts by licensees, security guards or assistant private investigators; and
11. Provides the Commissioner of Public Safety with subpoena powers in an investigation he makes of a licensee.