

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND TENTH LEGISLATURE

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**Legislative Document**

**No. 257**

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H. P. 185 House of Representatives, January 13, 1981  
Submitted by the Department of Public Safety pursuant to Joint Rule 24.  
Speaker laid before the House and Mr. Cox of Brewer granted leave to  
withdraw motion to reconsider reference to Committee on Legal Affairs. Sent up  
for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Gwadosky of Fairfield.  
Cosponsor: Mr. Jackson of Yarmouth.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

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**AN ACT to Revise the Law Relating to the Licensing of Private Investigators.**

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

Sec. 1. 32 MRSA c. 79, as enacted by PL 1977, c. 508, § 3, is repealed.

Sec. 2. 32 MRSA c. 89 is enacted to read:

**CHAPTER 89**

**PRIVATE INVESTIGATORS**

§ 8101. Short title

This chapter shall be known and may be cited as the Private Investigators Act.

§ 8102. Purpose

It is the purpose of this chapter to regulate any person, firm, corporation or other legal entity engaging in the business of private investigating.

§ 8103. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. **Commissioner.** “Commissioner” means the Commissioner of Public Safety.

2. **Investigative Assistant.** “Investigative assistant” means a person who acts as a private investigator under the direct supervision of a licensed private investigator in accordance with this chapter.

3. **Licensee.** “Licensee” means any person licensed under this chapter as a private investigator.

4. **Person.** “Person” means any any natural person, firm, association, partnership, corporation, government agency or subdivision, or any employee or agent thereof.

5. **Private investigator.** “Private investigator” means any person who, for any consideration whatsoever, engages in or solicits business or accepts employment to furnish information with reference to any of the following; or agrees to make or makes any investigation to obtain information with reference to any of the following:

A. Any crime or other act committed or threatened against the laws or government of the United States, any state or territory, or any political subdivision thereof;

B. The identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation or character of any person;

C. Libels, fires, losses, accidents, or damage or injury to persons or property;

D. The location, disposition or recovery of lost or stolen property; or

E. Evidence to be used before any court, board, officer or investigative committee.

§ 8104. License requirement; exceptions

1. **License.** No person may act as a private investigator without first obtaining from the commissioner a license to be a private investigator or investigative assistant.

2. **Exceptions.** This section does not apply to the following:

A. A person employed by or on behalf of the State, any political subdivision thereof, or any public instrumentality, while in the performance of his official duties;

B. A charitable or philanthropic organization, duly incorporated under the laws of the State, or any agent thereof, provided that the organization is not operated for profit;

C. A person employed to inquire into the fitness of an applicant for employment with that person’s employer;

**D. A credit reporting bureau or agency, or agent thereof, whose business is the furnishing of information concerning a person's business, financial or credit standing;**

**E. An insurance company, or agent thereof, investigating the personal habits and financial responsibility of applicants for insurance or indemnity bonds;**

**F. An attorney acting in a professional capacity;**

**G. A nonprofit trade or business association, board or organization, whether incorporated or unincorporated, or any agent thereof, conducting an investigation for the following purposes:**

**(1) To furnish to members of the association, board or organization, information concerning the business, financial or credit standing or the reputation of a person with whom the members consider doing business; provided that the investigation is no more extensive than is reasonably necessary; or**

**(2) To compile or disseminate statistics or data relating to business of the members of the association, board or organization;**

**H. An insurance adjuster or investigator;**

**I. A person engaged in compiling genealogical information; or**

**J. A person possessing a valid private investigator's license granted under any prior existing provision of law of this State, provided that, upon expiration of the license, the person shall be governed by this section.**

**§ 8105. Private investigator's license qualifications**

**A person is qualified to be licensed as a private investigator who:**

- 1. Age. Is at least 18 years of age;**
- 2. Citizenship. Is a citizen or resident alien of the United States;**
- 3. Graduation. Is a graduate of an accredited high school or has been granted high school equivalency status by the State;**
- 4. Character. Is of good moral character;**
- 5. Criminal history. Has not been convicted of a crime involving moral turpitude;**
- 6. Military discharge. Has not been dishonorably discharged from military service;**
- 7. Employment. Has been employed full-time, within 5 years of the date of application, for at least one year:**
  - A. As an investigative assistant possessing a valid license issued by the commissioner and who has passed a firearms examination prescribed by the commissioner;**

- B. As a member of an investigative service of the United States; or**
- C. As a law enforcement officer of a state or political subdivision thereof who has met the training requirements set forth in Title 25, section 2805 or is qualified to receive a waiver therefrom; and**

**8. Examination.** Has passed an examination administered by the commissioner covering subjects pertaining to private investigation to be prescribed by him.

For the purposes of this section, "full-time" has the meaning set forth in Title 25, section 2805.

#### **§ 8106. Acquisition of license by persons currently licensed**

A person possessing, under Maine Law, a valid private investigator's license on the effective date of this chapter whose license then expires, shall by application, compliance with section 8105, subsection 8 and payment of the required fee, be entitled to a private investigator's license.

#### **§ 8107. Application for original license**

Applications for original licenses shall be made to the commissioner in writing under oath on forms prescribed by him and shall be accompanied by the required fee which is not refundable. The application shall include a certification, by each of 3 reputable citizens of the State, of the following:

- 1. Residence.** That he resides in the community in which the applicant resides, has a place of business or proposes to conduct his private investigator business;
- 2. Knowledge of applicant.** That he has personally known the applicant for at least 3 years;
- 3. Relation to applicant.** That he is not related to the applicant by blood or marriage;
- 4. Character of applicant.** That the applicant is honest and of good moral character; and
- 5. Truth of statements in application.** That he has read the application and believes each statement in it to be true.

#### **§ 8108. Applicant with out-of-state license**

The commissioner shall grant a license to an applicant who has a valid private investigator's license granted under the laws of another state or territory of the United States, upon payment of the required fee and the production of satisfactory proof that:

- 1. Equivalent requirements.** The requirements of the state or territory for a private investigator's license were, at the date of the licensing, substantially equivalent to the requirements of this chapter; and

2. **Reciprocity.** The other state or territory grants similar reciprocity to license holders in this State.

§ 8109. **Renewal of license.**

Each private investigator's license is valid for a term of one year and is, unless revoked or suspended, be renewable annually as prescribed by the commissioner.

§ 8110. **Investigative assistant's license**

1. **Qualifications.** A person is qualified to be licensed as an investigative assistant who meets the qualifications set forth in section 8105, subsections 1 through 6.

2. **Application.** Application for an investigative assistant's license shall be made to the commissioner in accordance with the requirements of section 8107.

3. **Term of license.** The license is valid for one year from the date of issuance and is not renewable; except that the commissioner may, upon good cause shown, extend the license for any term not to exceed 6 months.

§ 8111. **Bonding requirement**

1. **Requirement.** A person licensed as a private investigator shall give to the commissioner a bond in the sum of \$10,000 if he is a resident of the State and in the sum of \$50,000 if he is not a resident of the State.

A person licensed as an investigative assistant shall give to the commission a bond in the sum of \$20,000.

2. **Form of a bond.** Each bond shall:

A. Be in a form prescribed by the commissioner;

B. Be executed by the licensee as principal and by a surety company authorized to do business in this State as surety; and

C. Be 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 intentional, knowing, reckless or negligent act of the licensee to bring, in his own name, an action on the bond.

§ 8112. **Ineligibility of public officials**

No person is eligible for a license under this chapter who derives plenary or special law enforcement powers from the State or any political subdivision thereof.

§ 8113. **Refusal; suspension; revocation; grounds**

The commissioner may, after a hearing in conformance with the Maine Administrative Procedure Act, Title 5, subchapter IV, refuse to issue or renew a license. The Administrative Court may suspend or revoke the license of any

person licensed under this chapter. The commissioner may refuse to issue or renew and the Administrative Court may suspend or revoke a license on any one or more of the following grounds:

1. **Employing felon or person with revoked license.** For employing, in connection with a private investigator business, in any capacity, any person who has been convicted of a felony or any former licensee whose license has been revoked;
2. **Employing more than one assistant.** For engaging or employing more than one investigative assistant at one time;
3. **False representation.** For falsely stating or representing that a person was or is in his employ;
4. **Moral turpitude.** For being adjudged guilty of any crime involving moral turpitude, or of any crime enumerated in this chapter; or
5. **Failure to comply with rules.** For failing to comply with any of the rules promulgated under this chapter by the commissioner.

§ 8114. Unlawful acts

1. **Acting without license; false representation.** It is a Class D crime for any person knowingly to commit any of the following acts:
  - A. Subject to section 8104, to act as a private investigator without a valid license;
  - B. To falsely represent that he is the holder of a valid license;
  - C. To falsely represent that any person in his employ is a private investigator or investigative assistant; or
  - D. To make any false statements or material omission in any application filed with the commissioner.
2. **Representation as peace officer; employment of felon; failure to surrender license.** It is a Class D crime for a licensed private investigator or investigative assistant knowingly to commit any of the following acts:
  - A. To make any representation which suggests, or which would reasonably cause another person to believe, that he is a sworn peace officer of this State, any political subdivision thereof, or any other state or of the Federal Government;
  - B. To employ, in connection with a private investigator business, in any capacity, any person who has been convicted of a felony or any former licensee whose license has been revoked; or
  - C. To fail or refuse to surrender his license to the commissioner following revocation or suspension.

3. **Employing unlicensed individual.** It is a Class D crime for a licensed private investigator knowingly to employ or engage any other person to act as a private investigator unless the person so employed or engaged is licensed as a private investigator or investigative assistant.

4. **Failure of assistant to return equipment.** It is a Class D crime for a licensed investigative assistant knowingly to fail to return immediately on demand, or within 7 days of termination of his employment, any item of equipment issued to him by his employer.

5. **Other unlawful acts.** It is a Class D crime for a person licensed under this chapter or any person employed by him knowingly to commit any of the following acts:

A. To 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. To 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. To interfere with or prevent lawful and peaceful picketing during strikes;

D. To 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. To interfere with or hinder lawful or peaceful collective bargaining between employers and employees;

F. To 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. To 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 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 a strike;

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

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

J. To send letters of literature to employers offering to eliminate labor unions; or

K. To advise any person of the membership of an individual in a labor



organization for the purpose of preventing that individual from obtaining or retaining employment.

§ 8115. Identification cards

The commissioner shall design and issue to each person licensed under this chapter an identification card featuring a recent photograph of the licensee.

§ 8116. Powers of the commissioner

1. Subpoenas. In any investigation conducted by the commissioner under this chapter, the commissioner may issue subpoenas to compel the attendance of witnesses and the production of evidence relevant to any fact in issue.

2. Contempt. If a witness refuses to obey a subpoena or to give any evidence relevant to proper inquiry by the commissioner, the Attorney General may petition the Superior Court in the county where the refusal occurred to find the witness in contempt. The Attorney General shall cause to be served on that witness an order requiring him to appear before the Superior Court to show cause why he should not be adjudged in contempt. The court shall, in a summary manner, hear the evidence and, if it is such as to warrant him in doing so, punish that witness in the same manner and to the same extent as for contempt committed before the Superior Court or with reference to the process of the Superior Court.

3. Rules. The commissioner shall adopt all rules necessary to administer this chapter including, but not limited to, fixing application and license fees and establishing a training requirement for investigative assistants.

§ 8117. Application of Administrative Procedure Act

The Maine Administrative Procedure Act, Title 5, chapter 375, shall govern all administrative actions taken under this chapter.

§ 8118. Severability clause

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

### STATEMENT OF FACT

This bill rewrites the law governing the licensing of private investigators. It harmonizes the licensing process and the adjudicatory hearing process with the Maine Administrative Procedure Act. It also makes 3 substantive changes: The addition of an examination requirement similar to that for polygraph examiners; the change from Class D crime to revocable offense of employing convicted felons and former licensees; and the elimination of both criminal and licensure jeopardy on the part of an investigative assistant who divulges information outside the scope of his employment.

The examination requirement is to give the licensing authority some means of insuring the competence of its licensees. As for the other changes, criminal liability is unduly harsh in both cases, and a licensee ought to be able to control the unauthorized dissemination of sensitive information by firing any assistant who violates a confidence. Any person injured by, for example, the public disclosures of a private fact would of course be able to pursue damages in court under existing tort law.