

1 HB397
2 217504-2
3 By Representatives Mooney, Wingo, Holmes, Fincher, Sanderford,
4 Carns, Stringer, Hanes, Oliver, Whorton and Sells
5 RFD: Boards, Agencies and Commissions
6 First Read: 22-FEB-22

8 SYNOPSIS: Under existing law, the Alabama Private
9 Investigation Board is responsible for licensing
10 and regulating private investigators in the state
11 pursuant to the Alabama Private Investigation
12 Regulatory Act.

13 This bill would change the name of the
14 regulatory law to the Alabama Private Investigation
15 and Process Server Regulatory Act and would provide
16 for the licensing and regulation of process servers
17 by the board.

18 Amendment 621 of the Constitution of Alabama
19 of 1901, as amended by Amendment 890, now appearing
20 as Section 111.05 of the Official Recompilation of
21 the Constitution of Alabama of 1901, as amended,
22 prohibits a general law whose purpose or effect
23 would be to require a new or increased expenditure
24 of local funds from becoming effective with regard
25 to a local governmental entity without enactment by
26 a 2/3 vote unless: it comes within one of a number
27 of specified exceptions; it is approved by the

1 affected entity; or the Legislature appropriates
2 funds, or provides a local source of revenue, to
3 the entity for the purpose.

4 The purpose or effect of this bill would be
5 to require a new or increased expenditure of local
6 funds within the meaning of the amendment. However,
7 the bill does not require approval of a local
8 governmental entity or enactment by a 2/3 vote to
9 become effective because it comes within one of the
10 specified exceptions contained in the amendment.

11
12 A BILL
13 TO BE ENTITLED
14 AN ACT

15
16 Relating to the Alabama Private Investigation
17 Regulatory Act; to amend Sections 34-25B-1, 34-25B-2,
18 34-25B-3, 34-25B-4, 34-25B-7, 34-25B-10, 34-25B-11, 34-25B-12,
19 34-25B-14, 34-25B-22, 34-25B-24, and 34-25B-27, Code of
20 Alabama 1975; to change the name of the regulatory act to the
21 Alabama Private Investigation and Process Server Regulatory
22 Act; to provide for the licensing and regulation of process
23 servers by the Alabama Private Investigation Board; and in
24 connection therewith would have as its purpose or effect the
25 requirement of a new or increased expenditure of local funds
26 within the meaning of Amendment 621 of the Constitution of
27 Alabama of 1901, as amended by Amendment 890, now appearing as

1 Section 111.05 of the Official Recompilation of the
2 Constitution of Alabama of 1901, as amended.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 34-25B-1, 34-25B-2, 34-25B-3,
5 34-25B-4, 34-25B-7, 34-25B-10, 34-25B-11, 34-25B-12,
6 34-25B-14, 34-25B-22, 34-25B-24, and 34-25B-27 of the Code of
7 Alabama 1975, are amended to read as follows:

8 "§34-25B-1.

9 "This chapter shall be known and may be cited as the
10 "Alabama Private Investigation and Process Server Regulatory
11 Act."

12 "§34-25B-2.

13 "As used in this chapter, the following terms shall
14 have the following meanings:

15 "(1) FELONY. A criminal offense that is defined and
16 punishable under the laws of this state, or an offense
17 committed outside the State of Alabama, which if committed in
18 this state, would constitute a felony under Alabama law; a
19 crime in any other state or a crime against the United States
20 which is designated as a felony; or an offense in any other
21 state, territory, or country punishable by imprisonment for a
22 term exceeding one year.

23 "(2) PRIVATE INVESTIGATION. The compensated act of
24 any individual or company engaging in the business of
25 obtaining or furnishing information with reference to any of
26 the following:

1 "a. A crime committed or threatened against the
2 United States or any state or territory of the United States.

3 "b. The identity, habits, conduct, business,
4 occupation, honesty, integrity, credibility, including, but
5 not limited to, the credibility of ~~a person~~ an individual
6 giving testimony in a criminal or civil proceeding, knowledge,
7 trustworthiness, efficiency, loyalty, activity, movement,
8 whereabouts, affiliations, associations, transactions, acts,
9 reputations, or character of any ~~person~~ individual.

10 "c. The location, disposition, or recovery of lost
11 or stolen property.

12 "d. The cause or responsibility for fires, losses,
13 accidents, damages, or injuries to ~~persons~~ individuals or to
14 property.

15 "(3) PRIVATE INVESTIGATOR. a. ~~A person~~ An
16 individual who, for compensation, performs one or more of the
17 private investigation services defined and regulated by this
18 chapter. A private investigator, by virtue of holding a valid
19 private investigator license, may also perform process serving
20 services.

21 "b. ~~A person~~ An individual who, for consideration,
22 advertises as providing or performing private investigation.
23 The term does not include an informant who, on a one time or
24 limited basis, as a result of a unique expertise, ability, or
25 vocation, and who provides information or services while under
26 the direction and control of a licensee of the board, that

1 would otherwise be included in the definition of private
2 investigation.

3 "c. ~~A person~~ An individual who is engaged in private
4 investigation as defined herein and who is licensed in
5 accordance with this chapter.

6 "(4) PROCESS SERVER. An individual who engages in
7 the service of legal process including, but not limited to,
8 writs, warrants, summonses, and orders of courts of justice or
9 judicial officers within any jurisdiction of this state and is
10 licensed by the board. An individual who holds a valid private
11 investigator license is also considered to hold a valid
12 process server license. The term does not include any of the
13 following:

14 "a. A sheriff, coroner, elisor, or other government
15 employee who is acting in the course of employment.

16 "b. A licensed attorney.

17 "c. A licensed homebuilder or licensed real estate
18 salesperson or broker engaged in real estate activity.

19 "§34-25B-3.

20 "(a) No ~~person~~ individual shall practice private
21 investigation or hold himself or herself out to the public as
22 a private investigator or use any term, title, or abbreviation
23 that expresses, infers, or implies that the ~~person~~ individual
24 is licensed as a private investigator unless the ~~person~~
25 individual at the time holds a valid license to practice
26 private investigation as provided in this chapter.

1 "(b) No individual shall engage in the service of
2 legal process or hold himself or herself out to the public as
3 a process server or use any term, title, or abbreviation that
4 expresses, infers, or implies that he or she is licensed as a
5 process server, unless the individual at the time holds a
6 valid license to practice process serving as provided in this
7 chapter.

8 "(c) All applicants shall pass a criminal background
9 check based on criteria established pursuant to Section
10 34-25B-4.

11 "§34-25B-4.

12 "(a) There is created the Alabama Private
13 Investigation Board. The appointing authorities shall
14 coordinate their appointments to ensure the membership of the
15 board ~~shall reflect~~ is inclusive and reflects the racial,
16 gender, geographic, urban ~~and~~, rural, and economic diversity
17 of the state.

18 "(b) (1) Private investigator members provided for
19 herein shall have had five years of experience as an
20 investigator prior to his or her appointment. Beginning on
21 August 1, 2018, private investigator members who are appointed
22 to the board shall have been licensed pursuant to this chapter
23 as a private investigator for a period of at least five years
24 prior to ~~his or her~~ appointment.

25 "(2) Beginning on the effective date of the act
26 adding this sentence, process server members who are appointed
27 to the board shall have had five years of experience as a

1 process server prior to his or her appointment. Beginning on
2 August 1, 2028, process server members who are appointed to
3 the board shall have been licensed pursuant to this chapter as
4 a process server for a period of at least five years prior to
5 appointment.

6 "(c) The following members shall be appointed to the
7 board:

8 "(1) Three ~~persons~~ individuals appointed by the
9 Governor, two of whom shall be private investigators in this
10 state and one of whom shall be a consumer who will represent
11 the public at large. The Governor shall appoint the three
12 members to initial terms of three years. ~~Thereafter, successor~~
13 ~~members shall be appointed for terms of four years each.~~

14 "(2) One ~~person~~ individual appointed by the
15 Lieutenant Governor, who ~~must~~ shall be a private investigator
16 or a process server. The Lieutenant Governor shall appoint the
17 member for an initial term of two years. ~~Thereafter, successor~~
18 ~~members shall be appointed for terms of four years.~~

19 "(3) One ~~person~~ individual appointed by the Speaker
20 of the House of Representatives who ~~must~~ shall be a private
21 investigator or a process server. The Speaker of the House of
22 Representatives shall appoint the member for an initial term
23 of two years. ~~Thereafter, successor members shall be appointed~~
24 ~~for terms of four years.~~

25 "(4) One ~~person~~ individual appointed by the Attorney
26 General who ~~must~~ shall be a private investigator. The Attorney
27 General shall appoint the member for an initial term of two

1 years. ~~Thereafter, successor members shall be appointed for~~
2 ~~terms of four years.~~

3 "(5) One ~~person~~ individual appointed by the Alabama
4 State Bar Association who ~~must~~ shall be a member in good
5 standing for an initial term of four years. ~~Thereafter,~~
6 ~~successor members shall be appointed for terms of four years.~~

7 "(6) One ~~person~~ individual appointed by the Alabama
8 Private Investigators Association who ~~must~~ shall be a private
9 investigator. The association shall appoint the member for an
10 initial term of four years. ~~Thereafter, successor members~~
11 ~~shall be appointed for terms of four years.~~

12 "(d) Following the initial appointments, all
13 successor members of the board shall be appointed for a term
14 of four years and shall serve until their successors are
15 appointed and qualified by subscribing to the constitutional
16 oath of office, which shall be filed with the Secretary of
17 State.

18 "(e) Any vacancy occurring on the board shall be
19 filled by the appointing authority of the vacating member for
20 the unexpired term.

21 "(f) No member may be appointed to succeed himself
22 or herself for more than ~~one full term~~ three full terms.

23 "(g) The appointing authority may remove a member of
24 the board for misconduct, incompetency, or willful neglect of
25 duty. The board may recommend to the appointing authority
26 suggested administrative actions that may be taken against a
27 board member for missing an excessive amount of meetings.

1 "(h) Each member of the board shall receive a
2 certificate of appointment from the Governor before entering
3 upon the discharge of the duties of office.

4 "§34-25B-7.

5 "There is ~~hereby~~ created in the State Treasury for
6 the use of the Alabama Private Investigation Board a fund to
7 be known as the Alabama Private Investigation Board Fund. All
8 private investigator and process server application and
9 license fees, penalties, fines, and any other funds collected
10 by the board under ~~the provisions of~~ this chapter are to be
11 deposited in this fund and used only to carry out the
12 operations of the board. No monies shall be withdrawn or
13 expended from the fund for any purpose unless the monies have
14 been appropriated by the Legislature and allocated pursuant to
15 this chapter. Any monies appropriated shall be budgeted and
16 allotted pursuant to the Budget Management Act in accordance
17 with Article 4 (commencing with Section 41-4-80) of Chapter 4
18 of Title 41, and only in the amounts provided by the
19 Legislature in the general appropriations act or other
20 appropriations act. ~~There is appropriated to the Alabama~~
21 ~~Private Investigation Board the sum of all monies collected~~
22 ~~and deposited into the Alabama Private Investigation Board~~
23 ~~Fund for each of the fiscal years ending September 30, 2013,~~
24 ~~and September 30, 2014, to be used for the operations of the~~
25 ~~board.~~

26 "§34-25B-10.

1 "(a) Except as otherwise provided in this chapter,
2 it shall be unlawful for any ~~person~~ individual to act as a
3 private investigator or process server without first obtaining
4 a license from the board. For prosecution purposes, a
5 violation of this chapter is classified as a Class A
6 misdemeanor.

7 "(b) Each ~~person~~ individual licensed in accordance
8 with this chapter shall designate to the board a physical
9 address where his or her records are to be kept.

10 "§34-25B-11.

11 "An application and all information on an
12 application for licensure as a private investigator or a
13 process server shall be treated as confidential and shall be
14 filed with the board on forms prescribed by the board. The
15 application shall include all of the following information of
16 the applicant:

17 "(1) His or her full name.

18 "(2) His or her date and place of birth.

19 "(3) All residences during the immediate past five
20 years.

21 "(4) All employment or occupations engaged in during
22 the immediate past five years.

23 "(5) Three sets of classifiable fingerprints.

24 "(6) A list of convictions and pending charges
25 involving a felony or misdemeanor in any jurisdiction.

26 "§34-25B-12.

1 "~~(a)~~ Each individual private investigator or process
2 server applicant shall meet the following criteria that he or
3 she:

4 "(1)a. Is at least 21 years of age for a private
5 investigator.

6 "b. Is at least 18 years of age for a process
7 server.

8 "(2) Has not been declared by any court of competent
9 jurisdiction incompetent by reason of mental defect or disease
10 unless a court of competent jurisdiction has subsequently
11 declared the applicant competent.

12 "(3) Has not been convicted of a crime of moral
13 turpitude, with the board having the final determination on
14 the interpretation of moral turpitude.

15 "(4) Has not been convicted of a felony crime.

16 "(5) Has passed an examination ~~to be administered~~
17 ~~twice annually~~ approved by the board designed to measure
18 knowledge and competence ~~in the investigation field.~~

19 "~~(b) A study guide shall be provided to any~~
20 ~~applicant seeking to obtain an initial or renewal license~~
21 ~~under this chapter.~~

22 "~~(c) Any investigator currently holding a business~~
23 ~~license in the State of Alabama shall not have to meet the~~
24 ~~initial application requirements of this chapter, but shall be~~
25 ~~issued a license pursuant to this chapter upon application.~~

26 "§34-25B-14.

1 "(a) The board shall issue to every private
2 investigator licensee and process server licensee an
3 identification card, which shall be issued in credit card
4 size, be permanently laminated, and contain the following
5 information of the licensee:

6 "(1) Name.

7 "(2) Photograph.

8 "(3) Physical characteristics.

9 "(4) ~~Private investigator's~~ The license number of
10 the private investigator or process server.

11 "(5) Expiration date of license.

12 "(b) The identification card shall be carried on the
13 person of the licensee when engaged in the activities of the
14 licensee.

15 "§34-25B-22.

16 "(a) The following acts, when committed by an
17 individual licensed as a private investigator in Alabama, shall
18 constitute a violation punishable as a Class A
19 misdemeanor:

20 "(1) To knowingly make a material misrepresentation
21 as to the ability of the individual to perform the
22 investigation required by a potential client in order to
23 obtain employment.

24 "(2) To make unsubstantiated monetary charges to a
25 client for services not rendered or transportation not
26 utilized.

1 "(3) To knowingly make a false report to a client in
2 relation to the investigation performed for a client.

3 "(4) To continue an investigation for a client when
4 it becomes obvious to the investigator that a successful
5 completion of an investigation is unlikely without first
6 advising the client and obtaining the approval of the client
7 for continuation of the investigation.

8 "(5) To reveal information obtained for a client
9 during an investigation to another individual except as
10 required by law.

11 "(b) (1) The board may revoke the license of any
12 process server for malfeasance, misfeasance, neglect of duty,
13 or incompetence, as provided by court rule or board rule.

14 "(2) Willfully and knowingly executing a false
15 return of service by a process server shall constitute a
16 violation punishable as a Class A misdemeanor, and shall
17 result in the permanent revocation of the license of the
18 violating process server.

19 ~~"(b) Persons~~ (c) Individuals licensed pursuant to
20 this chapter shall report any suspected instances of child
21 abuse or neglect to a local law enforcement agency or the
22 Department of Human Resources, or both.

23 "§34-25B-24.

24 "This chapter does not apply to the following:

25 "(1) An employee of any business or entity that is
26 not primarily engaged in the business of private investigation

1 or process serving when that employee is performing duties
2 related to his or her employment.

3 "(2) An investigation of the internal affairs of a
4 private business entity investigating a current or prospective
5 employee.

6 "(3) An employee of any business or entity that is
7 not primarily engaged in the business of private investigation
8 when that employee is working under a contract for his or her
9 services that his or her employer signed with a third party.

10 "(4) Any ~~person~~ individual or professional,
11 including without limitation an attorney providing legal
12 services or a licensed homebuilder or licensed real estate
13 salesperson or broker providing real estate services, who is
14 not primarily engaged in the business of private investigation
15 or process serving, but who in conjunction with his or her
16 business or profession may occasionally perform private
17 investigation services or process server services.

18 "(5) Any business or entity that is not primarily
19 engaged in the business of private investigation or process
20 serving.

21 "(6) A consumer reporting agency as defined by the
22 Federal Fair Credit Reporting Act.

23 "(7) Any certified public accountant authorized to
24 engage in the practice of public accountancy in this state or
25 any entity licensed or otherwise permitted to engage in the
26 practice of public accountancy in this state or the affiliated
27 entities thereof.

1 "(8)a. An attorney-at-law in good standing and
2 licensed to practice law;

3 "b. An employee of a single attorney or single law
4 firm who is acting within the employee's scope of employment
5 for the attorney or law firm; or

6 "c. A consultant, accident reconstructionist, or
7 forensic scientist when the ~~person~~ individual is retained by
8 an attorney, insurance company representative, or appointed by
9 a court to serve as an expert witness or to investigate, or to
10 make tests, conduct experiments, draw conclusions, render
11 opinions or make diagnoses, where those services require the
12 use of training or experience in a technical, scientific, or
13 social science field.

14 "(9) Any individual engaged in any of the following:

15 "a. Computer or digital forensic services.

16 "b. The acquisition, review, or analysis of digital
17 or computer-based information in order to obtain or furnish
18 information for evidentiary or other purposes or to provide
19 expert testimony before any court, board, officer, or
20 investigating committee.

21 "c. Network or system vulnerability testing,
22 including network scans and risk assessment and analysis of
23 computers connected to a network.

24 "§34-25B-27.

25 "(a) Any ~~person~~ individual offering private
26 investigation training ~~must~~ or process server training shall
27 first be certified by the board. The board shall ensure that

1 the instructors employed by the training provider possess both
2 the experience and academic credentials to ensure that the
3 curriculum and instruction will be beneficial to those seeking
4 to enter the profession. In order to qualify as a certified
5 trainer or instructor, or both, the trainer shall meet the
6 following criteria that he or she:

7 "(1) Is at least 21 years of age.

8 "(2) ~~Has~~ a. For a private investigator trainer, has
9 had at least three years' experience satisfactory to the board
10 with an investigative company or proprietary entity or with
11 any federal, United States Military, state, county, or
12 municipal law enforcement agency relating to the block of
13 instruction.

14 "b. For a process server trainer, has had at least
15 three years' experience satisfactory to the board with a
16 process service company or firm.

17 "(3) Is personally qualified to conduct the training
18 required by this chapter and is certified by the board which
19 shall establish standards for the instruction process.

20 "(b) A certified trainer, in his or her discretion,
21 may instruct personally or use a combination of personal,
22 instruction, audio, and visual training aids.

23 "(c) To assist in the implementation of a training
24 program, the certified trainer may use as an assistant trainer
25 any ~~person~~ individual who meets each of the following
26 requirements that the assistant:

27 "(1) Is at least 19 years of age.

1 "(2) Has had at least one year of experience with an
2 investigative company or experience as a process server, or
3 with any United States Military, state, county, or municipal
4 law enforcement agency.

5 "(d) A certified trainer may be an employee of a
6 private investigative or propriety agency or, if not, employed
7 by an agency as a company under this chapter.

8 "(e) The certified trainer shall certify that he or
9 she has successfully completed the training and shall submit
10 the certification to the board.

11 "(f) The training program, fees, and requirements
12 shall be established by rules ~~promulgated~~ adopted by the
13 board."

14 Section 2. Although this bill would have as its
15 purpose or effect the requirement of a new or increased
16 expenditure of local funds, the bill is excluded from further
17 requirements and application under Amendment 621, as amended
18 by Amendment 890, now appearing as Section 111.05 of the
19 Official Recompilation of the Constitution of Alabama of 1901,
20 as amended, because the bill defines a new crime or amends the
21 definition of an existing crime.

22 Section 3. This act shall become effective on the
23 first day of the third month following its passage and
24 approval by the Governor, or its otherwise becoming law.