

(124th General Assembly)
(Amended Substitute House Bill Number 188)

AN ACT

To amend sections 4749.01, 4749.04, and 4749.06 of the Revised Code to exempt commissioned peace officers from the licensing requirements concerning private investigators and security guards when acting as an employee or as an independent contractor for a person licensed as a private investigator, security guard, or both.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 4749.01, 4749.04, and 4749.06 of the Revised Code be amended to read as follows:

Sec. 4749.01. As used in this chapter:

(A) "Private investigator" means any person who engages in the business of private investigation.

(B) "Business of private investigation" means, except when performed by one excluded under division (H) of this section, the conducting, for hire, in person or through a partner or employees, of any investigation relevant to any crime or wrong done or threatened, or to obtain information on the identity, habits, conduct, movements, whereabouts, affiliations, transactions, reputation, credibility, or character of any person, or to locate and recover lost or stolen property, or to determine the cause of or responsibility for any libel or slander, or any fire, accident, or damage to property, or to secure evidence for use in any legislative, administrative, or judicial investigation or proceeding.

(C) "Security guard provider" means any person who engages in the business of security services.

(D) "Business of security services" means either of the following:

(1) Furnishing, for hire, ~~watchmen~~ watchpersons, guards, private ~~patrolmen~~ patrol officers, or other persons whose primary duties are to protect persons or property;

(2) Furnishing, for hire, guard dogs, or armored motor vehicle security services, in connection with the protection of persons or property.

(E) "Class A license" means a license issued under section 4749.03 of the Revised Code that qualifies the person issued the license to engage in the

business of private investigation and the business of security services.

(F) "Class B license" means a license issued under section 4749.03 of the Revised Code that qualifies the person issued the license to engage only in the business of private investigation.

(G) "Class C license" means a license issued under section 4749.03 of the Revised Code that qualifies the person issued the license to engage only in the business of security services.

(H) "Private investigator," "business of private investigation," "security guard provider," and "business of security services" do not include:

(1) Public officers and employees whose official duties require them to engage in investigatory activities;

(2) Attorneys at law or any expert hired by an attorney at law for consultation or litigation purposes;

(3) A consumer reporting agency, as defined in the "Fair Credit Reporting Act," 84 Stat. 1128, 15 U.S.C.A. 1681a, as amended, provided that the consumer reporting agency is in compliance with the requirements of that act and that the agency's activities are confined to any of the following:

(a) The issuance of consumer credit reports;

(b) The conducting of limited background investigations that pertain only to a client's prospective tenant and that are engaged in with the prior written consent of the prospective tenant;

(c) The business of pre-employment background investigation. As used in division (H)(3)(c) of this section, "business of pre-employment background investigation" means, and is limited to, furnishing for hire, in person or through a partner or employees, the conducting of limited background investigations, in-person interviews, telephone interviews, or written inquiries that pertain only to a client's prospective employee and the employee's employment and that are engaged in with the prior written consent of the prospective employee.

(4) Certified public insurance adjusters that hold a certificate of authority issued pursuant to sections 3951.01 to 3951.09 of the Revised Code, while the adjuster is investigating the cause of or responsibility for a fire, accident, or other damage to property with respect to a claim or claims for loss or damage under a policy of insurance covering real or personal property;

(5) Personnel placement services licensed under Chapter 4143. of the Revised Code and persons who act as employees of such entities engaged in investigating matters related to personnel placement activities;

(6) An employee in the regular course of the employee's employment,

engaged in investigating matters pertinent to the business of ~~his or her the employee's~~ employer or protecting property in the possession of ~~his or her the employee's~~ employer, provided the employer is deducting all applicable state and federal employment taxes on behalf of the employee and neither the employer nor the employee is employed by, associated with, or acting for or on behalf of any private investigator or security guard provider;

(7) Any better business bureau or similar organization or any of its employees while engaged in the maintenance of the quality of business activities relating to consumer sales and services;

(8) An accountant who is registered or certified under Chapter 4701. of the Revised Code or any of the accountant's employees while engaged in activities for which the accountant is certified or registered;

(9) Any person who, for hire or otherwise, conducts genealogical research in this state.

As used in division (H)(9) of this section, "genealogical research" means the determination of the origins and descent of families, including the identification of individuals, their family relationships, and the biographical details of their lives. "Genealogical research" does not include furnishing for hire services for locating missing persons or natural or birth parents or children.

(10) Any person residing in this state who conducts research for the purpose of locating the last known owner of unclaimed funds, provided that the person is in compliance with Chapter 169. of the Revised Code and rules adopted thereunder. The exemption set forth in division (H)(10) of this section applies only to the extent that the person is conducting research for the purpose of locating the last known owner of unclaimed funds.

As used in division (H)(10) of this section, "owner" and "unclaimed funds" have the same meanings as in section 169.01 of the Revised Code.

(11) A professional engineer who is registered under Chapter 4733. of the Revised Code or any of his employees.

As used in division (H)(11) of this section and notwithstanding division (I) of this section, "employee" has the same meaning as in section 4101.01 of the Revised Code.

(12) Any person residing in this state who, for hire or otherwise, conducts research for the purpose of locating persons to whom the state of Ohio owes money in the form of warrants, as defined in division (S) of section 131.01 of the Revised Code, that the state voided but subsequently reissues.

(13) An independent insurance adjuster who, as an individual, an independent contractor, an employee of an independent contractor,

adjustment bureau association, corporation, insurer, partnership, local recording agent, managing general agent, or self-insurer, engages in the business of independent insurance adjustment, or any person who supervises the handling of claims except while acting as an employee of an insurer licensed in this state while handling claims pertaining to specific policies written by that insurer.

As used in division (H)(13) of this section, "independent insurance adjustment" means conducting investigations to determine the cause of or circumstances concerning a fire, accident, bodily injury, or damage to real or personal property; determining the extent of damage of that fire, accident, injury, or property damage; securing evidence for use in a legislative, administrative, or judicial investigation or proceeding, adjusting losses; and adjusting or settling claims, including the investigation, adjustment, denial, establishment of damages, negotiation, settlement, or payment of claims in connection with insurance contractors, self-insured programs, or other similar insurance programs. "Independent adjuster" does not include either of the following:

(a) An attorney who adjusts insurance losses incidental incidental to the practice of law and who does not advertise or represent that he or she the attorney is an independent insurance adjuster;

(b) A licensed agent or general agent of an insurer licensed in this state who processes undisputed or uncontested losses for insurers under policies issued by that agent or general agent.

(14) Except for a commissioned peace officer who engages in the business of private investigation or compensates others who engage in the business of private investigation or the business of security services or both, any commissioned peace officer as defined in division (B) of section 2935.01 of the Revised Code.

(I) "Employee" means every person who may be required or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, or to go, or work, or be at any time in any place of employment, provided that the employer of the employee deducts all applicable state and federal employment taxes on behalf of the employee.

Sec. 4749.04. (A) The director of commerce may revoke, suspend, or refuse to renew, when a renewal form has been submitted, the license of any private investigator or security guard provider, or the registration of any employee of a private investigator or security guard provider, for any of the following:

(1) Violation of any of the provisions of division (B) or (C) of section 4749.13 of the Revised Code;

(2) Conviction of a felony or a crime involving moral turpitude;

(3) Violation of any rule of the director governing private investigators, the business of private investigation, security guard providers, or the business of security services;

(4) Testifying falsely under oath, or suborning perjury, in any judicial proceeding;

(5) Failure to satisfy the requirements specified in division (D) of section 4749.03 of the Revised Code.

Any person whose license or registration is revoked, suspended, or not renewed when a renewal form is submitted may appeal in accordance with Chapter 119. of the Revised Code.

(B) In lieu of suspending, revoking, or refusing to renew the class A, B, or C license, or of suspending, revoking, or refusing to renew the registration of an employee of a class A, B, or C licensee, the director of commerce may impose a civil penalty of not ~~less than one hundred dollars~~ ~~or~~ more than ~~two~~ one hundred dollars for each calendar day of a violation of any of the provisions of this section or of division (B) or (C) of section 4749.13 of the Revised Code or of a violation of any rule of the director governing private investigators, the business of private investigation, security guard providers, or the business of security services.

Sec. 4749.06. (A) Each class A, B, or C licensee shall register ~~his~~ the licensee's investigator or security guard employees, with the department of commerce, which shall maintain a record of each licensee and registered employee and make it available, upon request, to any law enforcement agency. The class A, B, or C licensee shall file an application to register a new employee no sooner than three days nor later than seven calendar days after the date on which the employee is hired.

(B)(1) Each employee's registration application shall be accompanied by one complete set of ~~his~~ the employee's fingerprints, one recent photograph of the employee, ~~his~~ the employee's physical description, and an eighteen-dollar registration fee.

(2) If the director requests the bureau of criminal identification and investigation to conduct an investigation of a licensee's employee and if the bureau assesses the director a fee for the investigation, the director, in addition to any other fee assessed pursuant to this chapter, may assess the licensee a fee that is equal to the fee assessed by the bureau. If, after investigation, the bureau finds that the employee has not been convicted of a felony within the last twenty years, the director shall issue to the employee an identification card bearing the license number and signature of the licensee, which in the case of a corporation shall be the signature of its

president or its qualifying agent, and containing the employee's name, address, age, physical description, and right thumb print or other identifying mark as the director prescribes, a recent photograph of the employee, and ~~his~~ the employee's signature. The director may issue a duplicate of a lost, spoliated, or destroyed identification card issued under this section, upon payment of a fee fixed by the director, not exceeding five dollars.

(C) ~~No Except as provided in division (E) of this section, no~~ class A, B, or C licensee shall permit an employee, other than an individual who qualified a corporation for licensure, to engage in the business of private investigation, the business of security services, or both businesses until the employee receives an identification card from the department, except that pending the issuance of an identification card, a class A, B, or C licensee may offer for hire security guard or investigator employees provided the licensee obtains a waiver from the person who receives, for hire, security guard or investigative services, acknowledging that the person is aware the employees have not completed their registration and agreeing to their employment.

(D) If a class A, B, or C licensee, or a registered employee of a class A, B, or C licensee, intends to carry a firearm, as defined in section 2923.11 of the Revised Code, in the course of engaging in the business or employment, ~~he either the licensee or registered employee~~ shall satisfactorily complete a firearms basic training program that includes twenty hours of handgun training and five hours of training in the use of other firearms, if any other firearm is to be used, or equivalency training, if authorized, or shall be a former peace officer who previously had successfully completed a firearms training course, shall receive a certificate of satisfactory completion of that program or written evidence of approval of the equivalency training, shall file an application for registration, shall receive a firearm-bearer notation on ~~his the licensee's or registered employee's~~ identification card, and shall annually requalify on a firearms range, all as described in division (A) of section 4749.10 of the Revised Code. A private investigator, security guard provider, or employee is authorized to carry a firearm only in accordance with that division.

(E) This section does not apply to commissioned peace officers, as defined in division (B) of section 2935.01 of the Revised Code, working for, either as an employee or independent contractor, a class A, B, or C licensee. For purposes of this chapter, a commissioned peace officer is an employee exempt from registration.

SECTION 2. That existing sections 4749.01, 4749.04, and 4749.06 of the

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Revised Code are hereby repealed.

SECTION 3. Section 4749.01 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. S.B. 162 and Am. H.B. 229 of the 121st General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

Speaker _____ of the House of Representatives.

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the _____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____