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AB-921 Private investigators: Disciplinary Review Committee: licensure. (2015-2016)

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Assembly Bill No. 921

CHAPTER 635

An act to amend Sections 7525.1, 7541, and 7541.1 of, and to add Sections 7519.1, 7519.2, 7519.3, and 7519.4 to, the Business and Professions Code, relating to private investigators.

[Approved by Governor October 08, 2015. Filed with Secretary of State October 08, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 921, Jones. Private investigators: Disciplinary Review Committee: licensure.

The Private Investigator Act provides for the licensure and regulation of private investigators by the Bureau of Security and Investigative Services within the Department of Consumer Affairs and requires the Director of Consumer Affairs to administer and enforce the act. The act authorizes the director to deny, suspend, or revoke a license if the director determines, among other things, that any provision of the act was violated by the licensee. The act also authorizes the director to impose a civil penalty of no greater than \$500 instead of suspending or revoking a license issued under the act for the violation of specified provisions if the director determines that the imposition of the civil penalty better serves the purposes of the act. The act requires an application for a license to be verified and include certain information, including, but not limited to, the full name and business address of the applicant.

This bill would require the Governor to appoint a Private Investigator Disciplinary Review Committee, and would authorize the Governor to remove any member of the committee for misconduct, incompetency, or neglect of duty. The bill would require the committee to consist of 3 members actively engaged in the business of a licensed private investigator and 2 public members and would require members to be appointed for a term of 4 years. The bill would require the committee to meet every 60 days or more or less frequently as may be required, and would require that the members be paid per diem and be reimbursed for actual travel expenses. The bill would require the committee to perform certain functions, including affirming, rescinding, or modifying decisions concerning administrative fines or the denial, suspension, or revocation of licenses that are appealed to the committee, as specified. The bill would authorize the committee to grant a probationary license with respect to appealed decisions, as specified. The bill would authorize a person licensed under the act to appeal the assessment of an administrative fine to the committee, and would authorize a person denied, suspended of, or revoked of a license to appeal to the committee, except as specified, if the appeal is in writing and made within 30 days of the assessment of the fine or denial, suspension, or revocation of the license. The bill would require the committee to notify the appellant in writing, by regular mail, of the committee's decision within 30 days of that decision. The bill would also authorize the appellant to request a hearing, as specified, if, among other things, the appellant disagrees with the committee's decision regarding the appeal. The bill would require that all evidence used by the bureau be provided to the committee prior to hearing an appeal. The bill would make the above provisions operative on July 1, 2017.

This bill would also authorize an applicant to, at his or her discretion, include a valid email address on the application.

Existing law requires an applicant, or his or her manager, for a license as a private investigator to have had at least 3 years' experience in investigation work. Existing law requires an applicant to substantiate the claimed years of qualifying experience and the exact details as to the character and nature thereof by written certifications from the employer, subject to independent verification by the Director of Consumer Affairs as he or she may determine. Under existing law, the business of each licensee is required to be operated under the active direction, control, charge, or management, in this state, of the licensee, if he or she is qualified, or the person who is qualified to act as the licensee's manager, if the licensee is not qualified. Existing law prohibits a person from acting as a qualified manager of a licensee until he or she has complied with certain requirements.

This bill would additionally authorize that written certification to be from a qualified manager, as specified.

Existing law requires experience for purposes of taking the examination for licensure as a private investigator to be limited to those activities actually performed in connection with investigations, as defined, and only if those activities are performed by persons who are employed in certain specified capacities.

This bill would additionally authorize such activities to be performed by persons who are managed, as specified, in those capacities.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 7519.1 is added to the Business and Professions Code, immediately following Section 7519, to read:

7519.1. (a) The Governor shall appoint a Private Investigator Disciplinary Review Committee, and may remove any member of the committee for misconduct, incompetency, or neglect of duty.

(b) The committee shall consist of three members actively engaged in the business of a licensed private investigator and two public members. The public members shall not be licensees or registrants, or engage in any business or profession in which any part of the fees, compensation, or revenue thereof, is derived from any licensee.

(c) The committee shall meet every 60 days or more or less frequently as may be required. The members shall be paid per diem pursuant to Section 103 and shall be reimbursed for actual travel expenses. The members shall be appointed for a term of four years.

(d) This section shall become operative on July 1, 2017.

SEC. 2. Section 7519.2 is added to the Business and Professions Code, to read:

7519.2. (a) The Private Investigator Disciplinary Review Committee shall perform the following functions:

(1) Affirm, rescind, or modify all decisions concerning administrative fines assessed by the bureau against private investigators that are appealed to the committee.

(2) Affirm, rescind, or modify all decisions concerning denial, suspension, or revocation of licenses or permits issued by the bureau, except denials, suspensions, or revocations ordered by the director in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that are appealed to the committee.

(b) The committee may grant a probationary license with respect to the appealed decisions described in subdivision (a).

(c) This section shall become operative on July 1, 2017.

SEC. 3. Section 7519.3 is added to the Business and Professions Code, to read:

7519.3. (a) (1) A person licensed with the department under this chapter may appeal the assessment of an administrative fine to the Private Investigator Disciplinary Review Committee. A person denied, suspended of, or revoked of a license under this chapter may appeal to the committee, unless the denial, suspension, or revocation of the license is ordered by the director in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) A request for an appeal to the committee shall be made in a written notice to the department within 30 days of the assessment of an administrative fine or denial, suspension, or revocation of a license.

(3) Following review by the committee of the appeal, the appellant shall be notified in writing, by regular mail, within 30 days of the committee's decision on the appeal.

(4) If the appellant disagrees with the decision made by the committee, the appellant may request a hearing as described in subdivision (b). A request for a hearing following a decision by the committee shall be made by written notice to the department within 30 days following notice of the committee's decision.

(5) If the appellant does not request a hearing within those 30 days, the committee's decision shall become final.

(b) (1) A person licensed with the department under this chapter may request a hearing in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code if he or she contests an assessment of an administrative fine, or to appeal a denial, suspension, or revocation of a license. A hearing may also be requested, if the appellant disagrees with the decision made by the committee.

(2) A request for a hearing shall be made by written notice to the department within 30 days following the issuance of the decision by the committee. A hearing pursuant to this subdivision shall be available only after a review by the committee.

(c) This section shall become operative on July 1, 2017.

SEC. 4. Section 7519.4 is added to the Business and Professions Code, to read:

7519.4. (a) The Private Investigator Disciplinary Review Committee shall be provided all evidence used by the bureau in reaching its decision prior to hearing an appeal.

(b) This section shall become operative on July 1, 2017.

SEC. 5. Section 7525.1 of the Business and Professions Code, as amended by Section 4 of Chapter 669 of the Statutes of 2014, is amended to read:

7525.1. An application shall be verified and shall include:

(a) The full name and business address of the applicant.

(b) The name under which the applicant intends to do business.

(c) A statement as to the general nature of the business in which the applicant intends to engage.

(d) A verified statement of his or her experience qualifications.

(e) (1) If the applicant is an individual, a qualified manager, a partner of a partnership, an officer of a corporation designated in subdivision (h), or a managing member of a limited liability company designated in subdivision (i), one personal identification form provided by the bureau upon which shall appear a photograph taken within one year immediately preceding the date of the filing of the application together with two legible sets of fingerprints, one set of which shall be forwarded to the Federal Bureau of Investigation for purposes of a background check, on a form approved by the Department of Justice, and a personal description of each person, respectively. The identification form shall include residence addresses and employment history for the previous five years and be signed under penalty of perjury.

(2) The bureau may impose a fee not to exceed three dollars (\$3) for processing classifiable fingerprint cards submitted by applicants, excluding those submitted into an electronic fingerprint system using electronic fingerprint technology.

(f) In addition, if the applicant for a license is an individual, the application shall list all other names known as or used during the past 10 years and shall state that the applicant is to be personally and actively in charge of the business for which the license is sought. If any other qualified manager is to be actively in charge of the business, the application shall be subscribed, verified, and signed by the applicant, under penalty of perjury. If any other person is to be actively in charge of the business, the application shall also be subscribed, verified, and signed by that person under penalty of perjury.

(g) If the applicants for a license are copartners, the application shall state the true names and addresses of all partners and the name of the partner to be actively in charge of the business for which the license is sought and list all other names known as or used during the past 10 years. If a qualified manager other than a partner is to be actively in charge of the business, then the application shall be subscribed, verified, and signed by all of the partners under penalty of perjury. If any other person is to be actively in charge of the business, the application shall also be subscribed, verified, and signed by that person, under penalty of perjury, under penalty of perjury by all of the partners and the qualified manager, or by all of the partners or the qualified manager.

(h) If the applicant for a license is a corporation, the application shall state the true names and complete residence addresses of the chief executive officer, secretary, chief financial officer, and any other corporate officer who will be active in the business to be licensed. The application shall also state the name and address of the designated person to be actively in charge of the business for which the license is sought. The application shall be subscribed, verified, and signed by a duly authorized officer of the applicant and by the qualified manager thereof, under penalty of perjury.

(i) If the applicant for a license is a limited liability company, the application shall state the true name and complete residence address of each managing member and any other officer or member who will be active in the business to be licensed. A copy of the most recent articles of organization, as filed by the Secretary of State, shall be supplied to the bureau upon request. The application shall also state the name and residence address of the designated person to be actively in charge of the business for which the license is sought. The application shall be subscribed, verified, and signed by a duly authorized member of the applicant under penalty of perjury.

(j) Any other information, evidence, statements, or documents as may be required by the director.

(k) At the discretion of the applicant, a valid email address.

(l) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 6. Section 7525.1 of the Business and Professions Code, as added by Section 5 of Chapter 669 of the Statutes of 2014, is amended to read:

7525.1. An application shall be verified and shall include:

(a) The full name and business address of the applicant.

(b) The name under which the applicant intends to do business.

(c) A statement as to the general nature of the business in which the applicant intends to engage.

(d) A verified statement of his or her experience qualifications.

(e) (1) If the applicant is an individual, a qualified manager, a partner of a partnership, or an officer of a corporation designated in subdivision (h), one personal identification form provided by the bureau upon which shall appear a photograph taken within one year immediately preceding the date of the filing of the application together with two legible sets of fingerprints, one set of which shall be forwarded to the Federal Bureau of Investigation for purposes of a background check, on a form approved by the Department of Justice, and a personal description of each person, respectively. The identification form shall include residence addresses and employment history for the previous five years and be signed under penalty of perjury.

(2) The bureau may impose a fee not to exceed three dollars (\$3) for processing classifiable fingerprint cards submitted by applicants, excluding those submitted into an electronic fingerprint system using electronic fingerprint technology.

(f) In addition, if the applicant for a license is an individual, the application shall list all other names known as or used during the past 10 years and shall state that the applicant is to be personally and actively in charge of the business for which the license is sought. If any other qualified manager is to be actively in charge of the business, the application shall be subscribed, verified, and signed by the applicant, under penalty of perjury. If any other person is to be actively in charge of the business, the application shall also be subscribed, verified, and signed by that person under penalty of perjury.

(g) If the applicants for a license are copartners, the application shall state the true names and addresses of all partners and the name of the partner to be actively in charge of the business for which the license is sought and list all other names known as or used during the past 10 years. If a qualified manager other than a partner is to be actively in charge of the business, then the application shall be subscribed, verified, and signed by all of the partners under penalty of perjury. If any other person is to be actively in charge of the business, the application shall also be subscribed, verified, and signed under penalty of perjury by that person, by all of the partners and the qualified manager, or by all of the partners or the qualified manager.

(h) If the applicant for a license is a corporation, the application shall state the true names and complete residence addresses of the chief executive officer, secretary, chief financial officer, and any other corporate officer who will be active in the business to be licensed. The application shall also state the name and address of the designated person to be actively in charge of the business for which the license is sought. The application shall be subscribed, verified, and signed by a duly authorized officer of the applicant and by the qualified manager thereof, under penalty of perjury.

(i) Any other information, evidence, statements, or documents as may be required by the director.

(j) At the discretion of the applicant, a valid email address.

(k) This section shall become operative on January 1, 2018.

SEC. 7. Section 7541 of the Business and Professions Code is amended to read:

7541. Except as otherwise provided by this section, an applicant, or his or her manager, for a license as a private investigator shall have had at least three years' experience in investigation work.

A year's experience shall consist of not less than 2,000 hours of actual compensated work performed by each applicant preceding the filing of an application.

An applicant who holds a law degree or who has completed a four-year course in police science, criminal justice, criminal law, or the equivalent thereof shall be required to have had two years' experience in investigation work.

An applicant shall substantiate the claimed years of qualifying experience and the exact details as to the character and nature thereof by written certifications from the employer or qualified manager, subject to independent verification by the director as he or she may determine.

Notwithstanding any other law, only an employer, qualified manager, or his or her designated agent may certify experience for purposes of this section. For purposes of this section, the term "employer" shall mean only those persons, corporations, partnerships, proprietorships, or other associations which, in the employ of the designated individual, regularly and routinely withheld income taxes and other payroll deductions for direct forwarding to governmental taxing authorities. For the purposes of this section, the term "qualified manager" shall mean only a manager who has qualified pursuant to Section 7536 and who has directly overseen the work and experience of the applicant.

An employer who is a licensee or qualified manager shall respond in writing within 30 days to an applicant's written request for certifications of the applicant's work experience as an employee and either provide the certifications or the reasons for denial. If the applicant notifies the director in writing, under penalty of perjury, that the applicant is unable to obtain the required written response from a licensee or provides the licensee's written denial and states, under penalty of perjury, that the licensee's reasons for denial are invalid or insufficient and the director concurs, the director may require the licensee to provide the bureau with all relevant employment records maintained pursuant to Section 7531.5 regarding the applicant for evaluation in substantiating the applicant's employment experience.

SEC. 8. Section 7541.1 of the Business and Professions Code is amended to read:

7541.1. (a) Notwithstanding any other law, experience for purposes of taking the examination for licensure as a private investigator shall be limited to those activities actually performed in connection with investigations, as defined in Section 7521, and only if those activities are performed by persons who are employed or managed in the following capacities:

- (1) Sworn law enforcement officers possessing powers of arrest and employed by agencies in the federal, state, or local government.
- (2) Military police of the armed forces of the United States or the National Guard.
- (3) An insurance adjuster or their employees subject to Chapter 1 (commencing with Section 14000) of Division 5 of the Insurance Code.
- (4) Persons employed by a private investigator who are duly licensed in accordance with this chapter, or managed by a qualified manager in accordance with Section 7536.
- (5) Persons employed by repossessioners duly licensed in accordance with Chapter 11 (commencing with Section 7500), only to the extent that those persons are routinely and regularly engaged in the location of debtors or the location of personal property utilizing methods commonly known as "skip tracing." For purposes of this section, only that experience acquired in that skip tracing shall be credited toward qualification to take the examination.
- (6) Persons duly trained and certified as an arson investigator and employed by a public agency engaged in fire suppression.
- (7) Persons trained as investigators and employed by a public defender to conduct investigations.

(b) For purposes of Section 7541, persons possessing an associate of arts degree in police science, criminal law or justice from an accredited college shall be credited with 1,000 hours of experience in investigative activities.

(c) The following activities shall not be deemed to constitute acts of investigation for purposes of experience toward licensure:

- (1) The serving of legal process or other documents.
- (2) Activities relating to the search for heirs or similar searches which involve only a search of public records or other reference sources in the public domain.
- (3) The transportation or custodial attendance of persons in the physical custody of a law enforcement agency.

(4) The provision of bailiff or other security services to a court of law.

(5) The collection or attempted collection of debts by telephone or written solicitation after the debtor has been located.

(6) The repossession or attempted repossession of personal property after that property has been located and identified.

(d) Where the activities of employment of an applicant include those which qualify as bona fide experience as stated in this section as well as those which do not qualify, the director may, by delegation to the bureau, determine and apportion that percentage of experience for which any applicant is entitled to credit.