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CRIMINAL JUSTICE AND PUBLIC SAFETY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
125TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 1148, L.D. 1563, Bill, “An Act To Regulate the Licensing and Oversight of Professional Investigators”

Amend the bill in section 4 by striking out paragraph B (page 1, lines 30 to 32 in L.D.) and inserting the following:

'B. If the person so convicted is licensed as a ~~private~~ professional investigator, suspend for a period of 5 years that person's ~~right as a private investigator~~ permit to carry a concealed firearm.'

Amend the bill in section 11 by striking out all of subsection 1-C (page 2, lines 15 and 16 in L.D.) and inserting the following:

'1-C. Computer forensics. "Computer forensics" means the use of digital forensic science that involves the examination of digital media to identify, preserve, recover and analyze information related to legal matters.'

Amend the bill in section 14 in subsection 4-A in paragraph F in the last line (page 3, line 9 in L.D.) by striking out the following: "or both" and inserting the following: 'or both.'

Amend the bill by striking out all of section 16 and inserting the following:

'**Sec. 16. 32 MRSA §8103-A** is enacted to read:

§8103-A. Board of Licensure of Professional Investigators

1. Establishment. The Board of Licensure of Professional Investigators, referred to in this chapter as "the board," is established pursuant to Title 5, section 12004-G, subsection 29-D to administer the provisions of this chapter to protect the public by improving the standards relative to the practice of private investigation and to protect the public from unqualified practitioners.

2. Duties. The board has the following powers and duties:

A. To provide advice regarding rules proposed by the chief;

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1 B. At the request of the chief, to review written examinations for professional
2 investigator applicants;

3 C. At the request of the chief, to advise the chief on granting, suspending and
4 revoking the licenses of professional investigators;

5 D. To establish standards governing the safety and conduct of persons licensed under
6 this chapter;

7 E. To recommend investigations regarding alleged violations of the provisions of this
8 chapter and any rules adopted by the chief; and

9 F. To provide information to the chief on any matter as the board determines
10 appropriate or necessary.

11 **3. Members.** The board consists of 7 members who must be residents of the State
12 and are appointed by the Governor as follows:

13 A. Two members of the State Police recommended by the chief;

14 B. One member recommended by the Attorney General;

15 C. Three members of the public, with no more than 2 holding a license under this
16 chapter, to be appointed to reflect a wide diversity of private investigation
17 experience. At least one member must be chosen for the member's expertise in
18 operating a private investigation company in this State and must have a minimum of
19 5 years of experience as a licensed private investigator; and

20 D. One administrator from a local or county law enforcement agency.

21 **4. Terms; removal.** Terms of the members of the board are for 3 years. The terms
22 are governed by Title 10, section 8009. Members may be removed by the Governor for
23 cause.

24 **5. Meetings; chair; quorum.** The board shall meet at least once a year to conduct
25 its business and to elect a chair. Additional meetings must be held as necessary to
26 conduct the business of the board and may be convened at the call of the chair or a
27 majority of the board members. Four members of the board constitute a quorum.'

28 Amend the bill in section 18 by striking out all of paragraph A and inserting the
29 following:

30 'A. A person employed by or on behalf of the ~~State~~, Federal Government, any state
31 or any political subdivision thereof, or any public instrumentality or a Canadian
32 province, while in the performance of his the person's official duties;'

33 Amend the bill in section 24 in paragraph J in the first line (page 5, line 8 in L.D.) by
34 striking out the following: "~~private professional~~" and inserting the following: 'private'

35 Amend the bill in section 31 in subsection 5 by striking out all of the blocked
36 paragraph (page 6, lines 34 to 38 in L.D.) and inserting the following:

37 'By affixing the applicant's signature, the applicant certifies that the information in the
38 application provided by the applicant is true and correct ~~and~~, that the applicant
39 understands that an affirmative answer to any of the questions in paragraph E is cause for

1 ~~refusal a license to be denied~~ and that any false statement may result in prosecution as
2 provided in section 8114.'

3 Amend the bill in section 32 in subsection 7-A in paragraph A in the 3rd line from the
4 end (page 7, line 9 in L.D.) by striking out the following: "who has" and inserting the
5 following: 'has earned'

6 Amend the bill in section 32 in subsection 7-A in paragraph D by striking out all of
7 subparagraph (2) (page 7, lines 31 to 40 and page 8, lines 1 and 2 in L.D.) and inserting
8 the following:

9 '(2) Educational experience, including at least:

10 (a) Sixty academic credits of ~~post-secondary~~ postsecondary education in a
11 field of study listed in division (b) acquired at an accredited junior college,
12 college or university; ~~or~~

13 (b) An associate degree ~~in law enforcement, based on 2 years of~~
14 ~~post-secondary instruction, conferred by an established~~ acquired at an
15 accredited junior college, college, university or technical college in police
16 administration, security management, investigation, law, criminal justice or
17 computer forensics or other similar course of study acceptable to the chief;
18 ~~and or~~

19 (c) An associate degree in any field of study that is acceptable to the chief;
20 and'

21 Amend the bill in section 34 in §8106 in the first paragraph in the first line (page 8,
22 line 11 in L.D.) by striking out the following: "~~private professional~~" and inserting the
23 following: 'private'

24 Amend the bill in section 35 in §8107 by striking out all of the first paragraph (page
25 8, lines 17 to 21 in L.D.) and inserting the following:

26 'Applications for original licenses ~~shall~~ must be made to the ~~commissioner in writing~~
27 chief under oath on forms prescribed by ~~him with respect to the requirements of section~~
28 ~~8105~~ the chief demonstrating the qualifications required under this chapter. The
29 application ~~shall~~ must be accompanied by the fee required under section 8117; and by a
30 certification; by each of 3 reputable citizens of the State; of the following:'

31 Amend the bill by striking out all of section 37 and inserting in its place the
32 following:

33 '**Sec. 37. 32 MRSA §8109**, as amended by PL 2003, c. 620, §1, is further amended
34 to read:

35 **§8109. Renewal of license**

36 Each ~~private professional~~ investigator's license is valid for an initial term of 2 years
37 ~~and is, unless~~. Unless the license is revoked or suspended, renewable the licensee may
38 apply to renew the license every 4 years after the initial term.'

1 Amend the bill in section 39 in subsection 3 in the 2nd line (page 9, line 13 in L.D.)
2 by striking out the following: "Within" and inserting the following: "To qualify for a
3 license as a professional investigator, within'

4 Amend the bill by inserting after section 39 the following:

5 **'Sec. 40. 32 MRSA §8110, sub-§4** is enacted to read:

6 **4. Sponsor. An investigative assistant may engage in the business of private**
7 **investigating only when sponsored by a professional investigator licensed under this**
8 **chapter.'**

9 Amend the bill in section 40 in §8110-A in the first paragraph in the last line (page 9,
10 line 20 in L.D.) by striking out the following: "as long as" and inserting the following:
11 'subject to the following'

12 Amend the bill in section in §8110-A in subsection 2 in the first line (page 9, line 23
13 in L.D.) by striking out the following: "duly" and inserting the following: '~~duly~~'

14 Amend the bill in section 41 in §8110-B by striking out all of subsection 4 (page 10,
15 lines 9 to 12 in L.D.)

16 Amend the bill by striking out all of section 43 and inserting the following:

17 **'Sec. 43. 32 MRSA §8113**, as amended by PL 2011, c. 161, §§1 to 3, is further
18 amended to read:

19 **§8113. Refusal; suspension; revocation; grounds**

20 ~~The commissioner~~ In accordance with the Maine Administrative Procedure Act, the
21 chief may, after notice of an opportunity for hearing in conformance with the provisions
22 of the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, refuse to
23 issue or renew a license. The District Court may, suspend or revoke the license of any
24 person licensed under this chapter. The following are grounds for an action to refuse to
25 issue, suspend, revoke or refuse to renew the license of a person licensed under this
26 chapter, impose probationary conditions, fines or costs of hearing and investigation or
27 issue a written warning on the following grounds:

28 **1. Fraud or deceit.** The practice of fraud or deceit in obtaining a license under this
29 chapter or in connection with service rendered within the scope of the license issued;

30 **2. Conviction of certain crimes.** Conviction of a crime ~~which~~ that involves
31 dishonesty or false statement or ~~which~~ that relates directly to the practice for which the
32 licensee is licensed or ~~which~~ that is enumerated in this chapter; or conviction of any crime
33 for which incarceration for one year or more may be imposed;

34 **3. Violation of chapter or rule.** Any violation of this chapter or any rule adopted
35 by the ~~commissioner~~ chief;

36 **4. Aiding or abetting unlicensed practice of private investigation.** Aiding or
37 abetting the practice of private investigation by a person not duly licensed under this
38 chapter and who represents ~~himself~~ to be others that the person is duly licensed;

39 **5. Failure to maintain bond and insurance.** Failure to maintain a bond and
40 insurance as required by section 8111;

1 **6. Incompetence.** Incompetence in the practice for which ~~he~~ the person is licensed.
2 A licensee ~~shall be deemed~~ is considered incompetent in the practice if the licensee has:

3 A. Engaged in conduct ~~which~~ that evidences a lack of ability or fitness to discharge
4 the duty owed by the licensee to a client or the general public; or

5 B. Engaged in conduct ~~which~~ that evidences a lack of knowledge; or an inability to
6 apply principles or skills to carry out the practice for which ~~he~~ the person is licensed;

7 **7. Employment of prohibited person.** Employment, in connection with a private
8 investigation business, in any capacity, of any person who has been convicted of a crime
9 punishable by imprisonment for one year or more or any former licensee whose license
10 has been revoked;

11 **8. Representations that licensee is sworn peace officer.** Representation by the
12 licensee that suggests, or that would reasonably cause another person to believe, that the
13 licensee is a sworn peace officer of this State, any political subdivision of this State, any
14 other state or ~~of~~ the Federal Government; or

15 **9. Unpermitted contact with a child.** Contact or communication with a child who
16 has not attained 14 years of age regarding a private investigation if that contact or
17 communication includes conduct with the intent to harass, torment, intimidate or threaten
18 a child.

19 **10. Misstatement.** Intentionally or knowingly making a material misstatement in
20 filing an application for a license or renewal of a license;

21 **11. Violation of standards of acceptable professional conduct.** A violation of the
22 standards of acceptable professional conduct adopted by rule by the chief; or

23 **12. Cause for refusal.** Committing an act that would have been cause for the refusal
24 to issue a license had the act occurred and been known to the chief at the time of issuance
25 of a license.

26 The chief may reconsider, modify or reverse probation, suspension or other
27 disciplinary action.'

28 Amend the bill in section 44 in §8113-A in subsection 2 in the 2nd line (page 12, line
29 22 in L.D.) by inserting after the following: "testing" the following: 'of a licensee'

30 Amend the bill by striking out all of section 45 and inserting in its place the
31 following:

32 '**Sec. 45. 32 MRSA §8114**, as corrected by RR 2003, c. 2, §98, is amended to
33 read:

34 **§8114. Unlawful acts**

35 A person is guilty of improper conduct in private investigation if the person commits
36 any of the acts described in this section. Improper conduct in private investigation is a
37 Class D crime.

38 **1. Acting without license; false representation.** ~~It is a Class D crime for any~~
39 ~~person knowingly to commit any of the following~~ A person acts without a license or
40 commits false representation if that person intentionally or knowingly:

1 A. ~~Subject to~~ Except as provided in section 8104, to act acts as a private professional
2 investigator without a valid license;

3 B. ~~To falsely represent~~ Falsely represents that ~~he~~ the person is the holder of a valid
4 license;

5 C. ~~To falsely represent~~ Falsely represents that any person in ~~his~~ the person's employ
6 is a private professional investigator or investigative assistant; or

7 D. ~~To make~~ Makes any false statements or material omission in any application filed
8 with the ~~commissioner~~ chief.

9 **2. Representation as peace officer; employment of certain convicted persons;**
10 **failure to surrender license.** ~~It is a Class D crime for a~~ A licensed private professional
11 investigator or investigative assistant ~~knowingly to commit any of the following acts~~
12 commits misrepresentation as a peace officer, employment of a certain convicted person
13 or failing to surrender if that professional investigator or investigative assistant
14 intentionally or knowingly:

15 A. ~~To make~~ Makes any representation, including, but not limited to, presentation of a
16 badge, that suggests, or that would reasonably cause another person to believe, that
17 the licensed private professional investigator or investigative assistant is a sworn
18 peace officer of this State, any political subdivision ~~thereof~~ of this State, ~~or~~ any other
19 state or ~~of~~ the Federal Government;

20 B. ~~To employ~~ Employs, in connection with a private ~~investigator~~ investigation
21 business, in any capacity, ~~any~~ a former licensee whose license has been revoked or a
22 person who has been convicted of a felony or any former licensee whose license has
23 been revoked; or:

24 (1) A crime in this State that is punishable by imprisonment for a term exceeding
25 one year or more;

26 (2) A crime under the laws of the United States that is punishable by
27 imprisonment for a term exceeding one year;

28 (3) A crime under the laws of another state that, in accordance with the laws of
29 that jurisdiction, is punishable by a term of imprisonment exceeding one year.
30 This subparagraph does not include a crime under the laws of another state that is
31 classified by the laws of that state as a misdemeanor and is punishable by a term
32 of imprisonment of 2 years or less; or

33 (4) A crime under the laws of another state that, in accordance with the laws of
34 that jurisdiction, does not come within subparagraph (3) but is elementally
35 substantially similar to a crime in this State that is punishable by a term of
36 imprisonment for one year or more; or

37 C. ~~To fail~~ Fails or ~~refuse~~ refuses to surrender ~~his~~ the professional investigator's
38 license to the ~~commissioner~~ chief following revocation or suspension.

39 **3. Employing unlicensed individual.** ~~It is a Class D crime for a~~ A licensed private
40 professional investigator commits improper employment conduct if the professional
41 investigator intentionally or knowingly ~~to employ or engage~~ employs or engages any

1 other person to act as a ~~private~~ professional investigator unless the person so employed or
2 engaged is licensed as a ~~private~~ professional investigator or investigative assistant.

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

7 ~~5. Other unlawful acts.~~ It is a Class D crime for a A person licensed under this
8 chapter or any person employed by ~~him~~ the person commits improper investigative
9 conduct if that person intentionally or knowingly to commit any of the following acts:

10 A. ~~To incite~~ Incites, encourage encourages or ~~aid~~ aids any person who has become a
11 party to any strike to commit any unlawful act against any person or property;

12 B. ~~To incite~~ Incites, stir stirs up, ~~create~~ creates or ~~aid~~ aids in the inciting of
13 discontent or dissatisfaction among the employees of any person with the intention of
14 having them strike;

15 C. ~~To interfere~~ Interferes with or ~~prevent~~ prevents lawful and peaceful picketing
16 during strikes;

17 D. ~~To interfere~~ Interferes with, ~~restrain~~ restrains or ~~coerce~~ coerces employees in the
18 exercise of their right to form, join or assist any labor organization of their ~~own~~
19 choosing;

20 E. ~~To interfere~~ Interferes with or ~~hinder~~ hinders lawful or peaceful collective
21 bargaining between employers and employees;

22 F. ~~To pay, offer~~ Pays or offers to give any money, gratuity, consideration or other
23 thing of value, directly or indirectly, to any person for any verbal or written report of
24 the lawful activities of employees in the exercise of their right to organize, form or
25 assist any labor organization and to bargain collectively through representatives of
26 their ~~own~~ choosing;

27 G. ~~To advertise~~ Advertises for, ~~recruit~~ recruits, ~~furnish~~ furnishes or ~~replace~~ replaces
28 or ~~offer~~ offers to furnish or replace for hire or reward, within or outside the State, any
29 skilled or unskilled help or labor, armed guards, other than armed guards employed
30 for the protection of payrolls, property or premises, for service upon property ~~which~~
31 that is being operated in anticipation of or during the course of a strike;

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

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

36 J. ~~To send~~ Sends letters ~~of~~ or literature to employers offering to eliminate labor
37 unions; or

38 K. ~~To advise~~ Advises any person of the membership of an individual in a labor
39 organization for the purpose of preventing that individual from obtaining or retaining
40 employment.'

1 Amend the bill in section 46 in §8114-A in subsection 1 in the 4th line (page 14, line
2 23 in L.D.) by striking out the following: "shall" and inserting the following: 'may'

3 Amend the bill in section 46 in §8114-A by striking out all of subsection 3 (page 15,
4 lines 1 and 2 in L.D.) and inserting the following:

5 **3. Aggrieved by disciplinary action.** A licensee aggrieved by a disciplinary action
6 of the chief may bring an appeal in accordance with the Maine Administrative Procedure
7 Act.'

8 Amend the bill in section 48 in §8116 by striking out all of subsection 3 (page 15,
9 lines 31 to 35 in L.D.) and inserting the following:

10 **3. Rules.** The ~~commissioner shall~~ chief with the advice of the board may adopt all
11 rules necessary to administer this chapter, including, but not limited to, ~~fixing application~~
12 ~~and license fees~~ rules regarding standards of acceptable professional conduct and
13 ~~establishing a training requirement~~ requirements for and sponsorship of investigative
14 assistants. Rules adopted pursuant to this subsection are routine technical rules as defined
15 in Title 5, chapter 375, subchapter 2-A.'

16 Amend the bill by striking out all of sections 52 to 54 and inserting the following:

17 **Sec. 52. 32 MRSA §8122** is enacted to read:

18 **§8122. Proof of valid professional investigator's license**

19 A person or company soliciting work or employment as a professional investigator
20 shall provide proof to any client that the professional investigator holds a valid
21 professional investigator's license before entering into any agreement or contract to
22 conduct investigations.

23 **Sec. 53. 32 MRSA §8123** is enacted to read:

24 **§8123. Violation**

25 Except when a criminal penalty is otherwise provided, a person who violates this
26 chapter or a rule adopted pursuant to this chapter commits a civil violation for which a
27 fine of not less than \$1,000 may be adjudged.'

28 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
29 section number to read consecutively.

30 **SUMMARY**

31 This amendment specifies that the rule-making authority in the Professional
32 Investigators Act is delegated to the Chief of the State Police, with the advice of the
33 Board of Licensure of Professional Investigators.

34 The amendment clarifies that the Chief of the State Police does not require
35 authorization of the board to act, but authorizes the board to provide information to the
36 chief on any matter as it determines appropriate.

37 The amendment clarifies and conforms violations and penalties language to proper
38 drafting standards.

1 The amendment also makes technical changes and corrections.

2 **FISCAL NOTE REQUIRED**

3 **(See attached)**