

Overview

Model Acts for the Regulation of Licensed Professional Investigators

September, 2002

This packet is intended to be a helpful resource for elected officials, individuals, and organizations with an interest in the licensure and regulation of individuals providing professional investigative services.

In today's rapidly-evolving political, economic and social environments, questions are often raised concerning the appropriate role of individuals and businesses who provide these important services. Typically these questions pertain to possible approaches that can be taken to provide for effective consumer protection, to provide parameters for obtaining, managing and using sensitive personal information, and to provide an efficient and streamlined regulatory process that recognizes the unique role and activities of this profession.

Two draft model acts are presented, with the thought that distinct text and approaches would equip the reader with a variety of options and perhaps stimulate the creation of new approaches. In some cases, the drafts could assist in the development of comprehensive statutory frameworks. In others, specific provisions could serve as the basis for revisions to existing licensure statutes.

Both draft documents provide for the state licensure and regulation of individuals and businesses providing professional investigative services. The documents: define key terms; set forth procedures for licensure applications, qualifications for licensure, suspension or termination of licenses; requirements that apply to the acts of licensees; a special master to oversee access to sensitive personal information; penalties for violations of the provisions; fees to support state services; and state oversight.

The draft documents also differ in several respects. For instance, the first draft incorporates provisions for reciprocity between states, apprenticeship and schooling requirements for applicants, requirements to protect personal information, and continuing education requirements for licensees. The second draft contains provisions requiring a written agreement between a licensee and his or her client, an advisory committee to assist the state, and an admonition process for violators.

These materials have been developed through the dedicated efforts of the individuals who have contributed their special experience and knowledge regarding the profession. Input and suggestions have been provided by individuals who are active within the industry, leaders in state government who regulate the industry, and recognized representatives of the interests and perspectives of consumers and clients. Special acknowledgement should be given to:

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Draft Model Act #1 - Licensed Professional Investigator Act

October 22, 2002

Section 1. Name of Act

A. This Act shall be known as the Licensed Professional Investigator Act.

Section 2. Legislative Declaration and Intent

- A. The Legislature finds and declares that the time-honored, venerable investigatory profession provides a vital service to society and individuals.
- B. Investigations performed by professional investigators for private parties, businesses, attorneys, and governmental entities are critical to the public's interest including but not limited to: ensuring the fair administration of justice; finding missing and abducted children and adults; locating parties and witnesses to legal proceedings; finding missing heirs, identifying birth parents; combating fraudulent activities including workers compensation fraud; tracking the movement and current location of personal or corporate assets in both liquid and convertible to liquid form; and preventing as well as rectifying identity theft.
- C. Persons and entities that provide professional investigations by necessity obtain and utilize information, on a confidential basis, from a variety of sources and that include both public records and private records, that involve personally-identifiable and non-public information, and that pertain to subjects and issues that are sensitive in nature.
- D. It is the intent of the Legislature in enacting this Act to:
- [i] Provide for the protection of the interests of consumers who engage or employ persons and entities to provide professional investigative services;
 - [ii] Ensure, foster, and encourage competition and fair dealings among persons and entities that provide professional investigative services;
 - [iii] Provide a statutory framework governing the licensure of persons and entities that provide professional investigative services;
 - [iv] Prohibit and prevent unethical, negligent or fraudulent activities by persons and entities that provide professional investigative services;
 - [v] Recognize the unique and specialized position and contribution of persons and entities that provide professional investigative services; and
 - [vi] Ensure that persons and entities that provide professional investigative services continue to adhere to the highest ethical standards in obtaining, managing, utilizing, protecting and preserving the sensitive information that is critical to their activities.

Section 3. Licensure Requirement

A. Any person or entity that provides, furnishes, contracts, arranges, offers, advertises, holds out or accepts employment to perform an investigation for a fee, shall be licensed as a licensed professional investigator.

[Option A – require the Commission [or the Director, if that option is selected] to establish specific categories of licensure]

B. The Commission on Professional Investigations shall establish separate categories of licensure for persons and entities that provide professional investigative services. The categories shall acknowledge and reflect the principal areas of practice of the profession.

[Option B – establish one category of licensure, covering each type of activity, in statute]

B. The Professional Investigator license that is required by subdivision [A] shall at a minimum be available for the following types of activities:

[i] Investigations individuals provide;

[ii] Investigations persons or entities provide primarily to business entities;

[iii] Investigations persons provide primarily to attorneys at law;

[iv] The supervision of the employees of a business, or of other licensees, by a person who is immediately responsible for the supervision of the investigations provided by that person or entity; and

[v] The supervision of the employees or field investigators of a business entity, by a person who is directly responsible for the activities of these individuals.

Section 4. Definitions

A. “*Apprentice*” means an individual person who is performing the activities as set forth in Section 6 in an effort to become qualified to submit an application to become a licensed professional investigator as provided in this Act.

B. “*Branch Office*” means an office of an entity other than its principal business location.

C. “*Certificate of Licensure*” means the certificate of licensure as provided in Section 13.

D. “*Commission*” means the Professional Investigator Commission as provided in Section 25.

E. “*Entity*” means an association of persons recognized as such under law including, but not limited to, a firm, association, company, corporation, group, institution, non-profit corporation, organization or partnership.

- F. “*Fee*” means compensation of any kind including but not limited to wages, commissions, and payments, regardless of the status of the person receiving the fee as an employee, independent contractor, or other capacity.
- G. “*Gainful full-time investigative activity*” means forty (40) hours of compensated investigative activity in any consecutive thirty (30) calendar day period.
- H. “*Investigation*” means the activity of obtaining and furnishing information for any of the following purposes:
 - [i] Identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficacy, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputations, or character of any person or entity
 - [ii] The location, accumulation, disposition, or recovery of lost or stolen property of any type or kind which may be discovered and exist in the future by alleged wrongful criminal or civil activity,
 - [iii] The cause or responsibility for fires, libel, slander, losses, purported accidents, damages or alleged injuries to persons or entities or to property by alleged criminal or civil activity.
 - [iv] The securing of evidence to be used before any criminal or civil court of law, arbitration, alternative resolution conference, board commission, law enforcement officer, governance, civil entity, employer or investigating committee as authorized by this state or disseminated to the public at large.
- I. “*Identification Card*” means the identification card as provided in Section 13.
- J. “*License*” means the license as provided in Section 13.
- K. “*Licensed Professional Investigator*” means a person or entity that has a current professional investigator license issued pursuant to this Act.
- L. “*Person*” means a natural individual.
- M. “*Special Master*” means a person designated as such as provided in Section 26.
- N. “*Sponsor*” means a person who is a licensee and who agrees to oversee an Apprentice as provided in Section 6.

Section 5. Qualifications for Licensure

[Option A – set forth the requirements in statute]

- A. An application for an initial license shall be granted to an applicant or his or her qualified manager who meet all of the following requirements:
 - [i] Be at least 21 years of age.

[ii] Be a citizen of the United States or a resident alien.

[iii] Not have been declared by a court of competent jurisdiction incompetent by reason of mental defect or disease unless a court of competent jurisdiction has subsequently declared the person as competent and certified the person as having remained competent for each of the five [5] years immediately preceding the date of submission of the application.

[iv] Not have committed acts or crimes constituting grounds for denial of a license as provided in Section 10.

[v] Not be suffering from addiction or dependence on an artificial substance other than medications prescribed by a physician licensed by this state.

[vi] Be of good moral character.

[vii] Maintain compliance with the requirements specified in this Act for the particular license for which an application is made.

[viii] Has the minimum experience and education as required by Section 6.

[ix] Submit a completed application and fee payments as required by Sections 7 and 9.

[x] Complete and pass the examination as required by Section 8.

[xi] Obtain insurance coverage as required by Section 16.

[Option B - require the Commission [or Director, if that option is chosen] to establish the qualifications by regulation]

A. The Commission shall promulgate regulations providing the qualifications for licensure under this Act, in a manner that is consistent with, and furthers, the intentions of this Act.

[Option C - require the Commission to establish the qualifications by rule or guidelines]

A. The Commission shall promulgate rules or guidelines providing the qualifications for licensure under this Act, in a manner that is consistent with, and furthers, the intentions of this Act.

Section 6. Experience and Education Required for Licensure

A. An Applicant must have both experience and education, as provided in this Section and as approved by the Commission [or Director, if that option is chosen], in order to apply to obtain a license.

B. In order to have the minimum experience necessary to obtain a license, the person shall:

[i] Have a minimum five (5) years of experience working as an Apprentice with any federal, United States Military, state, county, or municipal law enforcement agency;

[ii] Have a minimum of three (3) years of experience as a qualified manager, qualified branch manager or supervisor, or executive administrator with a licensee, licensee company/corporation;

[iii] Have performed a majority of his or her investigative services as an Apprentice on behalf of licensed attorneys or insurance companies; and

[iv] Have demonstrated knowledge, competency and skill.

C. The experience required by subparagraphs [i] and [ii] of this subdivision shall be demonstrated in a form and manner that is decided by the Commission.

D. The experience required by subparagraph [iii] of this subdivision shall be demonstrated by the provision of a notarized statement signed by the Apprentice.

E. The experience required by subparagraph [iv] of this subdivision shall be demonstrated by

[Option A - five [5] letters of recommendation signed by the individual licensed attorneys.]

[Option B – three [3] letters of recommendation signed by individual licensed attorneys.]

[Option A – require the Commission [or Director, if that option is chosen] to establish procedures by regulation for a person to become an Apprentice]

F. The Commission shall promulgate regulations setting forth the conditions, procedures and qualifications for an individual to become an Apprentice. Apprenticeship is intended to serve as an initial learning and potential career assessment process for the Apprentice prior to entrance into an accredited academic course of required study for licensure, with training provided by Sponsors who are licensees and who agree to provide the Apprentice with direction, training, supervision and control.

[Option B – set forth the conditions, procedures and qualifications for an Apprentice in statute]

F. The Commission shall grant the status of Apprentice to a person upon receipt of: [a] correspondence from that person stating that he or she is gainfully employed on a full-time basis by a licensee; and [b] correspondence from a licensee stating that the person or entity has agreed to be a Sponsor of the Apprentice.

G. Apprenticeship is intended to serve as an initial learning and potential career assessment process for the Apprentice prior to entrance into an accredited academic course of required study for licensure, with training provided by Sponsors who are licensees and who agree to provide the Apprentice with direction, training, supervision and control.

H. The Apprentice must perform his or her work under the direct, moment-by-moment supervision of a licensee.

I. A person may be an Apprentice for a period not to exceed twenty-four (24) consecutive months

J. A person may apply to be an Apprentice no more than twice.

[Option A – require apprenticeship or experience, followed by academic study]

- K. Only following the completion of *{insert minimum number of months, ex: 6}* consecutive months of apprenticeship, or *{insert minimum number required hours, ex: 1,000}* hours of independently verifiable investigative activity, whichever shall come first, the Apprentice may apply for admission to an accredited course of academic study in any of the skill areas as designated by the Commission and can maintain the status of an Apprentice while continuing as such a student.

[Option A – require apprenticeship or experience, and academic study, in any order]

- K. The Apprentice must complete *{insert minimum number of months, ex: 6}* consecutive months of apprenticeship, or *{insert minimum number required hours, ex: 1,000}* hours of independently verifiable investigative activity. At any time, the Apprentice may apply for admission to an accredited course of academic study in any of the skill areas as designated by the Commission and can maintain the status of an Apprentice while continuing as such a student.
- L. The total time period within which a person may be an Apprentice may not exceed nine (9) consecutive years.
- M. An Apprentice may apply to the Commission for approval to transfer to a different Sponsor.

[Option A – set forth the situations and procedures for switching Sponsors]

- N. An application by an Apprentice to transfer to a different Sponsor shall be approved by the Commission if the Sponsor ceases to be in business, or becomes disabled or deceased, and provided that the Apprentice submits the application for approval to transfer within 180 calendar days of the date the Apprentice knows or has reason to know that one or more of these situations applies to the Sponsor. The Commission may extend the 180-day deadline upon a showing of good cause.

[Option B – require the Commission to establish the rules for switching Sponsors]

- N. The Commission shall adopt procedures for the submittal, contents and consideration of applications to transfer to a different Sponsor.
- O. No person may serve in the capacity of Sponsor for more than six (6) Apprentices at any one time.
- P. An Apprentice may not perform any independent field activity.
- Q. Upon completion or termination of his or her sponsorship of an Apprentice, the Sponsor shall notify the Commission in a form as decided by the Commission. The notification shall at a minimum include certification by the Sponsor as to whether the Apprentice has completed the Apprenticeship, or whether the apprenticeship has been otherwise terminated. The notification shall be provided in writing to the Commission within fifteen (15) business days of such completion or termination action.

- R. The Sponsor shall report on the progress of the Apprentice in writing to the Commission once every six months commencing with the initial date of employment of the Apprentice. The report shall be in a form as determined by the commission, but shall include as a minimum the following:
- [i] The calendar dates during which the apprenticeship has taken place;
 - [ii] A narrative not to exceed 1000 words in length, explaining the primary duties, types of experiences gained, and the scope of the training received, including attendance at nationally recognized investigative seminars and accredited academic continuing education courses of study; and
 - [iii] An evaluation of the performance of the apprentice and a recommendation regarding future potential for successful completion of the required regimen of formal academic studies in preparation to qualify for licensing.
- S. An Apprentice who fails to complete his or her apprenticeship after having been approved twice to be an Apprentice is precluded from being an Apprentice for ten [10] consecutive years.
- T. In addition to the apprenticeship requirements set forth in this Section, an applicant for licensure under this Act must possess one (1) of the following a diploma demonstrating the successful completion of four (4) years of graduate or post graduate study and demonstrated certificated competency by formal academic learning bestowed by a recognized institution of higher learning credentialed by a public or private University or College after successfully completing not less than two (2) years of undergraduate academic study as well as two (2) years of specialized undergraduate related formal full time active internship engaged in practical activity in the field of private investigation or legal investigation thereafter receiving a formal degree of (to be named). The University or College and its course of graduate study must be developed with and approved by the American Bar Association, American Trial Lawyers Association, National Association of Legal Investigators as well as this states professional investigative association along with this states department of higher education.
- [i] The applicant may confine studies to individual sub-specialties of any of the fields of professional para investigative activity hereinabove designated.
- U. The requirement that a person serve as an Apprentice and have the education as provided in this Section shall not apply to a person or entity that engages in an activity for which a license is required as provided in Section 3, provided that the Commission determines person or entity has been so engaged for a minimum of *{insert number of years, ex: 5}*. The requirement that a person have the education as provided in this Section shall not apply to a person who has successfully challenged the courses, provided that the Commission confirms that the courses have been successfully challenged. A person or entity to whom this in this subdivision applies shall be entitled to apply for and receive a license, provided that the other requirements set forth in this Act are met.

Section 7. Application for Licensure

[Option A – set forth the requirement that the Commission [or Director, if that option is chosen] decide upon both the application form and the application requirements]

A. The Commission shall prescribe the form and contents of the application for licensure under this Act.

[Option B – set forth the requirement that the Commission decide upon the form of the application, and provide the specific application requirements by statute]

A. An application for a license under this chapter shall be on a form prescribed by the Commission.

B. An application shall be verified and shall include all of the following:

[i] The full name and business address of the principal place of business of the applicant, and each branch office within the United States of America including territories, possessions and protectorates.

[ii] The name under which the applicant will do business. The applicant shall submit three choices for names, indicating his or her first, second and third preference.

[iii] Three sets of classifiable electronic or print fingerprints or both.

[iv] Three credit references from lending institutions or business firms with whom the applicant has established a credit record.

[v] A list of all convictions and pending charges of a felony or misdemeanor in any jurisdiction, except those convictions that have been expunged.

[vi] Employment history for the immediately preceding five consecutive years.

[vii] A verified statement of his or her experience qualifications.

[viii] An application shall be accompanied by a notarized statement sworn by the applicant under penalty of perjury as to the identity of all licensed professional investigators employed by or affiliated with such licensee with such company and designated position with the entity.

[ix] An application must include the documentation of insurance coverage as provided in Section 16.

[x] In addition, if the applicant is a partnership or limited liability partnership:

[a] the name and residential address of each partner.

[xi] In addition, if the applicant is a company, corporation, or limited liability corporation:

[a] The name and residential address of the chief executive officer, secretary, chief financial officer, any other corporate officer who will be active in the business, and any qualifying manager, branch manager or executive[s].

[b] The legal name of the entity.

[c] The state and date of incorporation.

[d] The date the entity qualified to do business in this state.

[e] The name, business address, residence address, and office for two principal corporate officers.

[f] the name and address of the designated person to be actively in charge of the business for which the license is sought.

[g] Such other information as the Director may require.

[xii] In addition, if the applicant is an individual:

[a] The person's full name.

[b] The date and place of birth.

[c] The addresses of the person's residences for the immediate preceding five consecutive years.

[d] Three sets of classifiable electronic or print fingerprints or both.

[e] Three credit references from lending institutions or business firms with whom the subject has established a credit record.

[f] A list of all convictions and pending charges of a felony or misdemeanor in any global jurisdiction.

[g] A listing of all other names known as or used during the past 10 years.

[h] A statement, if the applicant is to be personally and actively in charge of the business for which the license is sought, that the applicant will be in charge.

[Option – include another provision:]

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

C. The application shall be subscribed, verified and signed as follows:

[i] If the applicant is a partnership, the application shall be signed by all of the partners under penalty of perjury, and 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 qualified manager, or by all of the partners or the qualified manager.

[ii] If the applicant is a corporation, 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.

[iii] If the applicant for a license is an individual, the application shall be subscribed, verified, and signed by the applicant, under penalty of perjury, and 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.

Section 8. Licensure Examination

- A. The Commission [or Director if that option is chosen] shall develop a written and oral examination that is designed to measure the knowledge and competency of applicants in the field of professional investigation. The written portion of the examination shall be comprised of multiple choice and essay questions. The oral portion of the examination shall be comprised of questions presented by panelists and answered by the applicant. The test shall be designed in a manner that enables it to be administered and completed in less than *{insert maximum number of hours, ex: 10}* in less than *{insert maximum number of days, ex: three [3]}*.
- B. Applicants for licensure must complete and pass the written and oral examination developed pursuant to subdivision [A] by

[Option A – authorize and direct the Commission to establish the passing score]

achieving a score as determined by the Commission as sufficient to demonstrate the level of skill and knowledge that is necessary for a license.

[Option B – place the passing score in statute]

achieving a cumulative minimum score of *{specify percentage, ex: 75%}*.

- C. The written and oral examination developed pursuant to subdivision [A] shall at a minimum include questions on the following subjects:

- [i] This Act.
- [ii] Privacy.
- [iii] Professional ethics.

- D. In addition to the subjects set forth in subdivision [C], the written and oral examination developed pursuant to subdivision [A] shall provide the applicant with the opportunity to answer questions on each of the following subjects:

- [i] Accident scene investigation and reconstruction.
- [ii] Aviation scene investigation and reconstruction.
- [iii] Crime scene investigation and reconstruction.
- [iv] Investigative skills and knowledge in either criminal or civil matters.
- [v] Environment.
- [vi] Interviews and statements.
- [vii] Recovery and documentation of civil evidence.

- [viii] Recovery and documentation of criminal evidence.
- [ix] Private or legal investigative constraints, scope of authority.
- [x] Surveillance.
- [xi] The private and legal investigative mandate of this state.
- [xii] Personal and executive protection.
- [xiii] Security services.
- [xv] Mystery shopping services.
- [xvi] Competitive intelligence gathering included related activity of any form or method including, but not limited to, document compilation.
- [xvii] Torts.
- [xviii] The laws and regulations applicable to public records.
- [xix] The laws relating to general business including contracts and agency.

- E. The Commission shall appoint individuals to serve on an Oral Examination Panel that shall serve at the pleasure of the Director and under his or her control and direction for the purpose of administering the oral portion of the examination. The appointees shall be current licensees with demonstrated skill and experience in the specific subject for which he or she shall administer questions.
- F. The Commission shall convene three appointed individuals who shall comprise a quorum for the conduct of an Oral Examination Panel.
- G. The written and oral examination shall be provided at a minimum twice each calendar year in each of the major cities of the state with a population exceeding *{insert specific population number, ex: 100,000}*.

Section 9. Fees for Application and Licensure

- A. The Commission [or Director, if that option is chosen] may impose an application fee in an amount not to exceed the direct costs associated with the preparation, handling and administration of the applications for licensure as set forth in Section 7 and applications for apprenticeship as set forth in Section 8.

[Option A – require the Commission to establish the application fee by regulation]

The Commission shall establish the schedule of application fees for each category of licensure, and Apprentices, on an annual basis.

[Option B – place the fees in statute]

The licensure application fees and the apprenticeship application fees shall be charged and collected by the Commission in accordance with the following schedule annually on the beginning of each calendar year:

- [i] Individual Professional Investigator license: *{insert dollar amount}*
- [ii] Corporate Professional Investigator license: *{insert dollar amount}*
- [iii] Legal Professional Investigator license: *{insert dollar amount}*
- [iv] Qualified Manager Professional Investigator license: *{insert dollar amount}*

[v] Supervising Manager Professional Investigator license: *{insert dollar amount}*

[vi] Apprentice fee [per individual] : *{insert dollar amount}*

- B. A person submitting an application for licensure shall include payment of the application fee with submission of the application.
- C. Payment of the application fee prescribed by this chapter entitles an applicant or his or her manager to one examination without further charge. If the person fails to pass the examination, he or she shall not be eligible for any subsequent examination except upon payment of the reexamination fee prescribed by this chapter for each subsequent examination.
- D. In addition to the application fee set forth in subdivision [A], the Commission 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.
- E. In addition the application fee set forth in subdivision [A], the Commission may impose an annual license fee in an amount set to cover the costs to the Commission and staff in the implementation of this Act. If an application for license is granted, the Commission shall issue a license, in a form which the Commission shall prescribe, to qualified applicants upon receipt of a nonrefundable, nonproratable license fee.

[Option A – require the Commission to establish the annual fee by regulation]

The Commission shall establish the schedule of fees for each category of licensure, and Apprentices, on an annual basis.

[Option B – place the fees in statute]

The licensure and apprenticeship fees shall be charged and collected by the Commission in accordance with the following schedule annually on the beginning of each calendar year:

[i] Individual Professional Investigator license: *{insert dollar amount}*

[ii] Corporate Professional Investigator license: *{insert dollar amount}*

[iii] Legal Professional Investigator license: *{insert dollar amount}*

[iv] Qualified Manager Professional Investigator license: *{insert dollar amount}*

[v] Supervising Manage Professional Investigator license: *{insert dollar amount}*

[vi] Apprentice fee [per individual] : *{insert dollar amount}*

Section 10. Consideration of License Applications

- A. Upon receipt of an application for a license, accompanied by nonproratable and non-refundable application fee, the Commission [or Director, if that option is chosen] shall:
- [i] Conduct an investigation to determine whether the statements made in the application are true;
 - [ii] Submit the fingerprints to the Federal Bureau of Investigation and this states Department of Justice for a search of its files to determine whether the individual fingerprinted has any recorded convictions or pending criminal charges;
 - [iii] Request that the *{insert state}* Department of Public Safety and Department of Justice compare the fingerprints submitted with the application to fingerprints on file with the (insert state) Department of Public Safety and Department of Justice.
- B. On subsequent applications for renewal, the Commission shall request that the *{insert state}* Department of Public Safety or Department of Justice or both, review its entire criminal history data files based upon the name, date of birth, sex, race and social security number of an applicant(s) for any new information since the initial date of licensure and the fingerprint comparison and furnish any information thereby derived to the Commission.
- C. The Commission may deny a license if he or she determines that the applicant, if an individual or, if the applicant is a person other than an individual, that its manager or any of its officers have:
- [i] Committed any act, which, if committed by a licensee, would be a ground for the suspension or revocation of a license under this Act.
 - [ii] Committed any act constituting dishonesty or fraud.
 - [iii] Been convicted of any act or crime constituting grounds for denial of licensure, including illegally using, carrying, or possessing a deadly weapon.
 - [iv] Been refused a license under this chapter or had a license revoked.
 - [v] Been an officer, partner, or manager of any person who has been refused a license under this chapter or whose license has been revoked.
 - [vi] While unlicensed committed, or aided and abetted the commission of, any act for which a license is required by this Act.
 - [vii] Failed to meet the qualifications for licensure as set forth in Section 5.
 - [viii] Failed to pass the examination as required in Section 8.
 - [ix] Knowingly made any false statement in his or her application.
 - [x] Has had any license revoked, or whose license is under suspension, or has failed to renew his or her license while it was under suspension.
 - [xi] If any member of any partnership, or any officer or director of any corporation, or any officer or person acting in a managerial capacity of any firm or association has had

any license issued to him or her revoked, or whose license is under suspension, or who has failed to renew his or her license while it was under suspension.

[xii] If any member of the partnership, or any officer or director of the corporation, or any officer or person acting in a managerial capacity of the firm or association, was either a member of any partnership, or an officer or director of any corporation, or an officer or person acting in a managerial capacity of any firm or association, whose license has been revoked, or whose license is under suspension, or who failed to renew a license while it was under suspension, and while acting in a managerial capacity participated in any of the prohibited acts for which any such license was revoked or suspended.

- D. Prior to the finalization of a decision by the Commissioner to deny an application for licensure for one of the reasons as prescribed in subdivision [A], the applicant shall be afforded an opportunity upon his or her request to a hearing as *{insert citation to the "administrative procedure act" for the state}*.
- E. If an application for a license is denied, the Commission shall notify the applicant in writing and shall set forth the specific grounds for denial. If such grounds are subject to correction by the applicant, the notice of denial shall so state and specify a reasonable period of time (not to exceed thirty calendar days) within which the applicant must make the required correction. An application for licensure will not be unreasonably delayed or withheld. A denial is appealable on only one occasion to a quorum of the commissioners of the Commission. During the period of the appeal, not to exceed 180 consecutive calendar days, the applicant may continue pre-denial employment, apprenticeship or internship status. If appeal is denied, the applicant is entitled to seek relief in accord with the civil laws of this state, but must cease all related professional activity for which requires licensure.

Section 11. Authority to Issue Rules & Regulations

[Option A – authority residing in a commission]

- A. The Commission may adopt and enforce reasonable regulations, rules, and guidelines, as follows:

[i] To establish the qualifications of licensees and managers, in addition to those prescribed in this Act, as determined by the Commission to be necessary to promote and protect the public welfare.

[ii] To carry out generally the provisions of this Act, including regulation of the conduct of licensees.

- B. The Commission shall comply with the requirements of *{insert citation to statute for particular jurisdiction}* as they apply to the promulgation of regulations, rules and guidelines.

[Option B – authority residing in a director]

Section 12. Licensed Professional Investigator Fund

- A. All application fees, licensure fees, and fines and monies collected and imposed as provided in this Act shall be deposited in the Licensed Professional Investigator Fund, which is a special account in the State Treasury created for this purpose.
- B. Monies in this fund shall only be available for the costs of the Commission and staff for the direct costs associated with the implementation and administration of this Act. The monies shall not be available for redirection, transfer or loan to other activities or programs.
- C. On an annual basis, the Commission shall make available to licensees, in written form or posted on the Internet, an accounting for the revenues received from applicants and licensees, and the expenses the Commission and staff have incurred in the implementation of this Act.
- D. If at any time the balance in the Licensed Professional Investigator Fund equals two times the total expenditures the Commission and staff have incurred in the previous calendar year in the implementation of this Act, the Commission shall provide the licensees, on a pro rata basis, with a refund equal to those excess funds, minus the direct costs incurred in the distribution of the funds.

Section 13. License, Certificate of Licensure, and Identification Card

- A. The Commission [or Director, depending on which option is chosen] shall issue a license, the form and content of which shall be determined by the Commission. In addition, the Commission shall issue a "Certificate of Licensure " to any licensee, upon request and upon the payment of a fee of {insert fee amount}.
- B. The Commission shall issue an identification card of the size, design, and content as determined by the Commission and as consistent with requirements of subdivision [C] to each licensee, if an individual, or if the licensee is a person other than an individual, to its manager and to each of its officers and partners. The identification card shall be sufficient evidence that the licensee is licensed pursuant to this Act.
- C. The identification card shall at a minimum contain the name, photograph and physical characteristics, and license number of the licensee, and license expiration date. Each of these pieces of information shall be incorporated into the card in a manner that enables them to become visible and legible upon activation by the licensee. The identification card shall clearly state that the person is licensed as a licensed professional investigator or is the manager or officer of the licensee.
- D. The identification card shall be issued as a wallet-sized electronic smart card and shall have a electronic strip/microchip onto which will be stored the entire career history of the licensee including but not limited to professional achievement awards recognized by the Commission as well as any disciplinary actions and formal complaints filed by the commission and resolutions thereof. The card shall be fingerprint and PIN actuated protected. The identification card shall be composed of a durable material and shall to the maximum extent feasible and practical be a smart card incorporating technologically-advanced identification and security features.
- E. The Commission may charge a fee sufficient to reimburse the Commission's costs for furnishing the pocket card. The fee charged may not exceed the actual direct costs for

system development, maintenance, and processing necessary to provide this service, and may not exceed *{specify dollar amount, ex: sixteen dollars (\$16)}*.

- F. When a person to whom a card is issued terminates his or her position, office, or association with the licensee, the card shall be surrendered to the licensee and within five days thereafter shall be mailed or delivered by the licensee to the Commission for cancellation.

Section 14. License Renewal

- A. A license, or renewal thereof shall be valid for a period of three (3) years from the date of issuance. The Commission [or Director] shall provide each licensee with a renewal application form sixty (60) days prior to the expiration of the license.
- B. The Commission shall charge a renewal fee to each licensee.

[Option A – require the Commission to establish the license renewal fee by regulation]

The Commission shall establish the schedule of license renewal fees for each category of licensure, by regulation, on an annual basis. Any increase in the fee shall not exceed any additional verifiable Commission costs plus any cost of living index increase(s) since the previous increase:

[Option B – place the fees in statute]

The licensure renewal fees shall be charged and collected by the Commission annually on the beginning of each calendar year. The fee shall be *{insert dollar amount, such as \$100}*.

- C. A penalty as prescribed by the Commission will be assessed on any renewal application postmarked after the expiration date of the license.
- D. No renewal application will be accepted more than thirty (30) days after the expiration date of the expiring license. No renewal fee will be accepted more than thirty (30) days after the date on which the Commission notified the licensee that the fee is due.

Section 15. Cessation of Licensed Activity

- A. A licensee who ceases to be engaged in gainful full-time investigative activity shall, unless precluded from doing so by reason of debilitating mental or physical condition or health, death, or good cause as determined by the Commission, notify the Commission by certified or registered mail and surrender the license to the Commission for cancellation, within thirty (30) days.
- B. A licensee to whom subdivision [A] applies, shall provide notification of that fact to all staff, employees, licensees for whom the licensee serves a qualifying managers, and Apprentices for whom the licensee is a Sponsor, within thirty (30) days.
- C. A licensee to whom subdivision [A] applies who associates with a qualifying manager professional investigator within three (3) calendar months as an employee, is not required to

apply or qualify for a new license. The Commission may, in its discretion, extend this three-month period for a reasonable time upon application.

Section 16. Standard of Conduct

[Option A – Authorize Commission or Director, whichever option is chosen, to establish through regulations]

- A. The Commission shall promulgate regulations setting forth the standards of conduct to be followed by individuals who provide, furnish, contract, arrange, offer, advertise, hold out or accept employment to perform an investigation for which a license is required under this Act.

[Option B – Delineate specific standards in statute]

- A. A licensee shall carry the identification card on his or her person when engaged in the activities which require a license under this Act.
- B. A licensee, while engaged in any activity for which licensure is required, shall display his or her valid identification card to an individual upon request during the performance of an investigation.
- C. A licensee shall display a valid identification card upon receiving a verbal request from any person for any reason except in those matters in which the licensee is performing undercover activities or other pretext activities as might be authorized by a duly convened and empowered Special Master.

[i] Notwithstanding the provisions of the Special Master law *{if such a law exists within this state}*, a Special Master is not required in the performance of investigations involving information considered to be a matter of public record as defined by this state. In regard to the acquisition or viewing of material that comprises a personal record, access authorized by a Special Master will not be allowed without a permanent impression or recording of the identification smart card.

- D. The license shall at all times be posted in a conspicuous place in the principal place of business of the licensee.
- E. The licensee shall at all times be legally responsible for the good conduct in the business of each of his or her employees or agents, including his or her manager.
- F. The licensee shall maintain a record containing information relative to his or her employees as may be prescribed by the Commission.
- G. The licensee shall at all times be legally responsible for the good conduct in the business of each of his or her employees or agents, including his or her manager.
- H. The licensee shall maintain a record containing information relative to his or her employees as may be prescribed by the Commission.

I. Every advertisement by a licensee soliciting or advertising business shall contain his or her business name, business address or telephone number, and license number as they appear in the records of the bureau.

[i] For the purposes of this section, "advertisement" shall include any business card, stationery, brochure, flyer, circular, newsletter, fax form, website, printed or published paid advertisement in any media form, or telephone book listing.

J. The licensee shall notify the Commission in writing within 30 days after closing or changing the location of a branch office.

K. The licensee shall maintain errors and omissions insurance coverage, professional liability coverage, and personal injury and property damage insurance coverage in the following minimum amounts: One Million Five Hundred Thousand Dollars (\$1,500,000.00) per incident; and Three Million Dollars (\$3,00,000.00) in the aggregate. Proof thereof shall be provided to the Commission prior to the issuance and renewal of the license.

[i] The Commission shall be an additional named insured on the required insurance policies.

[ii] The licensee shall provide the Commission with a certificate demonstrating the existence of the required coverage, together with documentation of a provision for a minimum of 30 days notice to the Commission of any potential cancellation prior to effective cancellation, with a return receipt.

[iii] The Commission shall revoke the license of a licensee who does not have the insurance coverage as required by this Section until such time and place acceptable proof of such insurance is furnished the Commission.

[iv] The licensee may deposit with the Commission funds in the amount of the required insurance coverage, as an alternative to the requirement to obtain insurance. The Commission shall place any and all funds received pursuant to this subdivision in a trust account which accrue on the trust funds will inure to the benefit of the licensee which deposited into the trust fund.

[v] In the event of cancellation of insurance coverage, the Commission shall notify the general public by immediate official publication thereof by the Commission either in an official printed or electronic journal, Internet website, recognized publication of general interest with an aggregate certified circulation at a minimum equal to 90% of this State's general population, and printed or electronic law journals with a circulation, readership, or impressions equal to 95% of the licensed and admitted legal practitioner(s) within the State. A licensee to whom this subdivision applies shall reimburse the Commission for all of its costs in complying with this requirement prior to reinstatement of the licensee's license.

[vi] Any dispute regarding this Section shall be adjudicated following payment of the Commission's costs of compliance with this Section, and license reinstatement.

[vii] A licensee shall display a certificate of insurance prominently within public view within the licensee's office(s) and so indicate such insurance is in full force and effect in any communication of initial representation commonly referred to as a retainer agreement

or letter of understanding which states or implies terms and conditions of temporary service by licensee.

[viii] A litigant in a matter involving this Act and a licensee, who has exhausted all other forms of personal service on a licensee, may substitute serve the Commission. Such substituted service shall be deemed valid personal service upon the licensee. The Commission shall immediately forward notice of having accepted such service to the last known address of the licensee as shown within the records of Commission and shall notify the insurance carrier of record of such valid service in accord with the records of the Commission, instructing the insurance company to resolve the matter in accord with the terms and conditions of said policy. A litigant or his representative may not effectuate service of process by substitute publication in any form.

L. A licensee shall notify the Commission in writing within fourteen (14) calendar days of any of the following:

[i] Any change in the status of an individual who is a qualifying agent, manager, employee, apprentice, or principal corporate officer identified in the application for licensure;

[ii] Any material change in the information previously furnished or required to be furnished to the Commission;

[iii] An occurrence which could reasonably be expected to affect the licensee's right to a license under this act, including, but not limited to, any criminal charges alleged and proven against any licensee by any person or entity;

[iv] If a licensee company, any criminal charges alleged against any designated licensed professionals, or apprentices employed by or affiliated with the licensee;

[v] Any judgment against the licensee obtained by any person for civil damages;

[vi] Any judgment against the licensee, or an employee or Apprentice of the licensee, for punitive damages;

M. A person or entity that becomes the owner of a licensee and is not licensed under this Act must submit an application for a license as required by Section 6, within thirty (30) days of becoming the owner, and pass and complete the examination for licensure as required by Section 7 within the next 12 calendar months following acquisition of ownership.

[i] Pending the consideration of the application by the Commission, the new owner of the licensee may provide investigative services that require a license under this Act Successful completion of the licensure exam must occur.

[ii] If for any reason as determined by the Commission the application of the new owner for a license is denied, the new owner may not provide investigative services that require a license under this Act.

[iii] The Commission may, for good cause and at its discretion, extend the period of time allowed for the new owner to successfully complete and pass the licensure examination.

- N. A licensee shall adopt and maintain procedures ensuring the confidentiality, security and, as appropriate, preservation of information obtained in the performance of an investigation for which a license is required under this Act. This information shall not be provided, transferred, or sold to third parties in any form or manner without the advance, affirmative written consent of the client.

[Option C – Combination of A & B: authorization to the Commission, plus some specific standards in statute]

Section 17. Continuing Education

[Option A – require continuing education in statute, and require Commission to develop the program by regulation]

- A. Any individual licensed as a professional investigator shall complete *{insert number of hours, ex: 16}* hours of continuing education units, as approved by the Commission [or Director, depending on which option is chosen], in order to renew his or her license.
- B. The Commission shall promulgate regulations providing for the approval of courses, the appropriate course subjects, and the process for certification of completion of the requirement set forth in subdivision [A].

[Option B – require continuing education in statute, and set forth the program in statute]

- A. Any individual licensed as a professional investigator shall complete a minimum of *{insert number of hours, ex: 16}* hours of continuing education units, as approved by the Commission, in order to renew his or her license, of which *{insert percentage of units that shall consist of education related to ethics, ex: 33 1/3}* of the minimum required total hours shall be on the subject of ethics and of which *{insert percentage of units that shall consist of education related to privacy, ex: 33 1/3}* of the minimum required total hours two hours shall be on the subject of privacy.
- B. A licensee shall submit to the Commission a statement signed under penalty of perjury attesting that he or she has completed the continuing education requirements in subdivision [A]. This statement shall be submitted with the license renewal application.
- C. A licensee shall maintain, for a period of six years, copies of certificates of continuing education completion demonstrating compliance with the continuing education requirements in subdivision (a).
- D. The Commission shall suspend the license of any licensee who is found not to be in compliance with subdivision (a), (b), or (c), for a period not to exceed 60 days, at which time the Commission shall revoke the license unless the required continuing education units have been completed.
- E. A licensee renewing his or her license during the period from January 1 *{insert date}*, to December 31, *{insert date}*, inclusive, shall submit to the Commission a statement signed under penalty of perjury attesting that he or she has completed eight hours of continuing education units.

- F. Continuing Education Providers (CEP) shall obtain approval from the Commission prior to offering a course for continuing education units to licensed private investigators: (1) The Commission shall establish a procedure for approving CEPs to offer continuing education units to licensed professional investigators. (2) Continuing Education Providers shall submit to the Commission a course description, certificate and curriculum vitae of course instructors for review and approval. (3) Continuing Education Providers offering these continuing education units shall pay an application fee of *{insert dollar amount, ex: \$500}*, on a biennial basis, to the Commission. (4) Continuing Education Providers shall maintain a record of course sign-in forms, sign-out forms, student enrollment, copies of certificates of completion, and course outlines for a period of six years. (5) Continuing Education Providers shall agree to audits performed by the Commission. (6) The Commission may revoke or deny the right of a CEP to offer continuing education units for failure to comply with any of the requirements of this subdivision.
- G. The Commission shall deem accredited colleges and universities as approved CEPs with approval of specific courses by the Commission.
- H. The Commission shall audit on an annual basis not less than 10 percent of license renewal submissions and CEP applications.
- I. The Commission shall convene an advisory committee to consult with the Commission in the consideration and approval of course providers and course content. The advisory committee shall include representatives of course providers and of professional associations of licensed professional investigators.

Section 18. Reciprocity with Other States

[Option A - provide Commission [or Director, depending on which option is chosen] with authority, together with discretion]

- A. The Commission may negotiate and enter into reciprocal agreements with appropriate officials in other states to permit designated licensed professionals or interns [not apprentices unless accompanied by, in the presence of, and under the direct moment-by-moment supervision of, a licensee] of licensee corporations or companies, professional investigators who meet or exceed the qualifications established by this Act to operate across state lines on mutually acceptable terms.

[Option B – provide Commission with authority, and prescribe conditions in statute]

- A. The Commission may authorize a licensed professional investigator from another state to continue in this state for 60 days an investigation that originated in the state which is the location of the licensed professional investigator's principal place of business if that state provides reciprocal authority for this state's licensees.
- B. The licensed professional investigator shall notify the Commission in writing upon entering the state for the purpose of continuing an investigation and shall be subject to all provisions of this chapter. For purposes of this section, "originated" means investigatory activities conducted subsequent to an agreement to conduct an investigation.

Section 19. Prohibited Acts

A. No person or entity shall do any of the following:

[i] Act as or represents himself or herself to be a licensed professional investigator under this Act when that person is not a licensee under this Act.

[ii] Falsely represent that he or she is employed by a licensee under this Act when that person is not employed by a licensee under this Act.

[iii] Carry a badge, identification card, or business card, indicating that he or she is a licensed professional investigator when that person is not a licensee under this Act.

[iv] Use a letterhead or other written or electronically generated materials indicating that he or she is a licensed professional investigator when that person is not a licensee under this Act.

[v] Advertise that he or she is a licensed professional investigator under this Act when that person is not a licensee.

[vi] Advertise or conduct business from any location other than that shown on the records of the Commission as his or her principal place of business unless he or she has received a branch office certificate for the location after compliance with the provisions of this Act.

[vii] Knowingly make a material misrepresentation to a client or potential client as to his or her ability to perform an investigation for which a license is required under this Act.

[viii] Request or demand payment of false or unsubstantiated charges for services not rendered or expenses not incurred in the performance of an investigation for which a license is required under this Act.

[ix] Knowingly make a false report to a client or potential client regarding the necessary level or extent of effort in the performance of the investigation performed or to be performed for which a license is required under this Act.

[x] Persist in an investigation on behalf of a client when it is clear to the designated licensed professional investigator that a successful completion of the inquiry is unlikely, unless the client is previously so advised and provides affirmative assent to the continuation.

[xi] Reveal information obtained in the performance of an investigation for a client to a third party, except as required by law.

B. The Commission may suspend or terminate the license of any person or entity who does any of the acts set forth in subdivision [A].

C. Any person who does any of the acts set forth in subdivision [A] is guilty of a misdemeanor that is punishable by a fine of ten thousand dollars (\$10,000) or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment. Any entity who does any of the acts set forth in subdivision [A] is guilty of a misdemeanor that is punishable by a

fine of ten thousand dollars (\$10,000) or by imprisonment of the owners, operators, and/or managers, in a county jail for not more than one year, or by both that fine and imprisonment

Section 20. Discovery

- A. Notwithstanding any other provision of law, all communications between a licensed professional investigator and his or her client that are designated in writing to be privileged and confidential are absolutely privileged and confidential and are not subject to any form of discovery unless otherwise require by law or in the event of an life-threatening situation which can be mitigated by such disclosure.

Section 21. Municipal Fees and Taxes

- A. No licensee shall be required to obtain any authorization, permit or license from, or pay any other fee or post a bond in any municipality, county or other political subdivision of this state to engage in any business or activity regulated under this mandate.
- B. Notwithstanding subsection (1) of this section, a municipality, county or other political subdivision of this state may impose a bona fide business tax upon a licensee.

Section 22. Violations.

- A. Any person who violates any provision of this Act chapter or who conspires with another person to violate any provision of this Act is guilty of a misdemeanor punishable by a fine of five thousand dollars (\$5,000) or by imprisonment in the county jail not to exceed one year, or by both that fine and imprisonment. Any person who performs an act for which a license is required as provided in Section 3 of this Act, and any person who engages that person to perform such act and who know or has reason to know that the person is not licensed as required, is guilty of a felon punishable by a fine of ten thousand dollars (\$10,000) or by imprisonment in state prison not to exceed one year, or by both such fine and imprisonment.
- B. Any person who is convicted of a violation of the provisions of this Act shall not be issued a license under this chapter, within *{insert specific number of years, ex: one}* year following that conviction.
- C. The Commission shall gather evidence of violations of this Act and of any rule or regulation established pursuant to this Act by persons or entities providing professional investigative services and who fail to obtain a license, and shall gather evidence of violations and furnish that evidence to prosecuting officers of any county or city for the purpose of prosecuting all violations occurring within their jurisdiction.
- D. The *{enter type of court, ex: superior court}* in and for the *{specify jurisdiction, ex: county}* wherein any person or entity has engaged or is about to engage in any act which constitutes a violation of this Act, upon a petition filed by the Commission, issue an injunction or other appropriate order restraining this conduct and may impose civil fines not exceeding ten thousand dollars (\$10,000) for each violation. The proceedings under this section shall be governed by *{specify statutes setting forth laws of civil procedure}* except that there shall be

no requirement to allege facts necessary to show or tending to show lack of adequate remedy at law or irreparable injury.

- E. The *{enter type of court, ex: superior court}* in and for the *{specify jurisdiction, ex: county}* in which any person or entity has engaged in any act which constitutes a violation of this Act may, upon a petition filed by the Commission, order this person or entity to make restitution to persons injured as a result of the violation.
- F. The court may order a person subject to an injunction or restraining order, provided for in subdivision [D], or subject to an order requiring restitution pursuant to subdivision [E] to reimburse the Commission for expenses incurred by the Commission in its investigation related to its petition.

Section 23. Update and Amendments

- A. The Commission [or Director, depending on which option is chosen] shall provide a copy of this act and any rules promulgated hereunder as may be amended to each licensee every two (2) years at no charge and any person, upon written request, for such reasonable fee as the Commission may fix.
- B. All updates and amendments will be immediately posted to the Commission's web site.

Section 24. Exceptions

- A. The provisions of this Act shall not apply to:
 - [i] An individual designated as a paralegal operating within the confines of a law office under the direct supervision of a duly licensed attorney at law in this state engaged in only legal research. Any designated activity conducted outside of the law office by a designated representative of a law office shall only be done in concert and together with a licensed attorney at law or a licensee.
 - [ii] A governmental officer or employee performing official duties;
 - [iii] A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating or credit worthiness of persons, or a person who provides consumer reports in connection with;
 - [iv] Credit transactions involving the consumer on whom the information is to be furnished and involving the extensions of credit to the consumer;
 - [v] Information for underwriting of insurance involving any entity;
 - [vi] An attorney at law performing duties relating to the attorney's practice of law. A person claiming any exemption pursuant to this subdivision must be regularly and exclusively employed by one (1) law firm in connection with the affairs of that law firm and must obtain licensure under this Act no later than one (1) year following initial employment with the attorney regardless of the nature, title or assigned responsibilities as

proposed at the time to initial employment either on staff or as an independent contractor to that attorney or law firm.

[vii] An insurance adjuster legally employed who engages in no other investigative activities other than those that might be connected with adjustment of claims against an insurance company by whom they are a staff in house employee or licensed as an independent insurance adjuster as required by this state. A licensed independent adjuster may accept assignments and investigate matters in behalf of a plaintiff so long as an insurance company might be involved and said activities of the licensed independent insurance adjuster are limited to those matters involving only civil torts.

[viii] A private business staff employee conducting inquiry investigations relating to the internal affairs of such business presuming said staff employee is not employed solely for the purpose of conducting said investigations. If employed solely for an investigative purpose, then said employee shall obtain licensure under this Act no later than one (1) year from the commencement of initial employment, regardless of the initial position or stated responsibilities of employment with that business.

[ix] The agent of a lienholder solely in the business of repossessing or recovery of collateral items encumbered by liens.

[x] A person engaged in the service of legal process for a court of competent jurisdiction in this state.

Section 25. Commission on Professional Investigation

[Option A – authority residing in a commission]

- A. There is hereby created the Commission on Professional Investigation, hereinafter referred to as the Commission. The Commission shall consist of *{insert number, ex: nine (9)}* members, each of whom shall possess good moral character as determined by the Governor and be an active licensee both at the time of appointment and throughout their service on the Commission. Each commissioner shall be appointed by the Governor of this State, upon consultation with members of the profession of license professional investigation and the professional trade associations that represent licensees, and with the confirmation of the *{enter house or houses, ex: Senate}*.
- B. *{insert number, ex: five (5)}* of the members of the Commission shall each have been principally engaged as a licensee in this state under this mandate for at least the five (5) years immediately preceding the date of their appointment and shall be of recognized good business standing.
- C. *{insert number, ex: four (4)}* of the members of the Commission shall be persons who are not engaged in or conducting the business or acting in the capacity of a licensee, but whom have experience and legal familiarity consistent with the needs of this Commission, and whom shall be neutral members representing the interests of the public.
- D. Initially, the Governor shall appoint all such members for staggered terms of three (3) years, two (2) years, and one (1) year. All such members shall be appointed for terms as provided in the following subsection.

- E. Subsequent to the initial appointments as provided in subdivision [D], each member of the Commission shall be appointed for a term of three (3) years, and may be reappointed. Any vacancy occurring on the Commission shall be filled by the Governor for the unexpired term, subject to confirmation by the *{enter house or houses, ex: Senate}*. No member shall be appointed to succeed himself or herself for more than three (3) full terms. The Governor may remove any member of the Commission for misconduct, incompetency or willful neglect of duty. Such removal is discretionary and is not subject to appeal
- F. In making appointments to the Commission, the Governor shall strive to ensure that at least one (1) person serving on the Commission is sixty (60) years of age or older and that at least two (2) persons serving on the Commission are members of a racial and gender minority. One (1) person serving on the Commission will be from the then existing or retired member of the judicial branch of government in this State.
- G. The Commission shall be a limited judicial body and the members and its employees are hereby granted absolute immunity from any civil liability when acting in good faith in the performance of their duties as provided in this Act.
- H. Should litigation be filed against members of the Commission arising from the performance of their duties under this Act, the members shall be defended by the Attorney General of this State. In addition, if there appears to be a conflict of interest, cummis counsel may be selected by the commissioner for impartial and separate representation at the state's expense. A commissioner may retain at his/her own expense additional counsel to represent his/her interest.
- I. Upon confirmation of the members appointed, the Commission shall organize itself by selecting from its members a Chairman, co-chairman, vice chairman and designate a Special Master as needed and shall have the unilateral authority to do all things necessary and proper for carrying out the provisions of this Act not inconsistent with the laws of this state. The Commission may promulgate and adopt such bylaws, rules and regulations as are reasonably necessary for such purpose.
- J. The Commission's rules and regulations shall incorporate and establish canons of ethics and minimum acceptable standards of practice for licensees. A majority of the Commission shall constitute a quorum at any meeting of the Commission.
- K. The Commission, or any committee or subcommittee thereof, shall be entitled to the services of the Attorney General in connection with the affairs of the Commission. The Commission is authorized to appoint and employ a qualified person who shall not be a member of the Commission to serve as executive director, define the duties, fix the compensation and delegate to him/her those activities that will expedite the functions of the Commission.
- L. Each member of the Commission shall be compensated at a rate not to exceed what would be available in the private sector for the rederance of such services and the time consumed in the performance of services in behalf of the Commission as set by the Governor. The funds for said compensation will be derived from licensure fees generated under this Act, payable monthly along with reimbursement of any authorized out of pocket expense incurred in the performance of the responsibilities of a Commission member. The Commission is authorized to investigate either on the basis of complaints files with it or, on its own initiative, instances of suspected violations of this Act.

- M. The Commission shall promulgate internal qualifications to be complied with by any licensee who under this Act mandate desires to have access to the unique considerations of the Commission's designated Special Master. Only licensees so recognized and chartered by the Commission shall be able to appear before a "Special Master" to make application for a "writ of Assistance." Only licensees under this act and mandate will have access to or make application for the writ of assistance to the designated special master. The privilege to make application for exparte hearings for writs of assistance will be limited to an individual licensee. An attorney at law, company, corporation, or other artificial entity cannot be granted such privilege. The Commission is granted the authority to subpoena for purposes of deposition those persons and documents necessary to any investigation undertaken under this act without restriction or challenge prior to sealed compliance with the subpoena. Subsequent to compliance under seal, the issued subpoena may be challenged to be quashed in accord with the rules and procedures promulgated by the Commission prior to an unsealing of the contents of the response to the subpoena.
- N. The Commission may hold such meetings as it may deem necessary for the purpose of transacting such business as may properly come before it, all members of the Commission shall be notified of the time and place of each meeting. The meetings may be held by any means other than a physical group conference, but must physically meet at least once every thirty (30) days at a date, time and location as will be determined by the Chairperson, Co Chairperson and vice Chairperson of the Commission.

[Option B – authority residing in a director]

Section 26. Special Master

- A. The *{insert name of the judicial branch of government for the state, or a representative of that branch, for example: the Judicial Council}* shall appoint a Special Master to serve at its discretion for the purpose of reviewing applications by licensees for access to sensitive information for the purpose of performing an investigation, conducting ex parte proceedings, and approving or denying the applications, and issuing writs of assistance.
- B. A licensee who complies with the requirements of this Section shall have unrestricted access to any governmental or privately maintained record in any form now existing or developed in the future upon a good faith showing in the application to the Special Master by exparte application of a relevant, probative need to know for the preservation of potential evidence in a probable or anticipated criminal or civil procedure of either the Federal or State jurisdiction, and upon approval of the application
- C. A licensee who complies with the requirements of this Section shall have unrestricted access to personal identifying information that is probative to the event of interest that is set forth in the application to the Special Master, provided that the information is sought for a business-to-business purpose including, but not limited to, the prevention of fraud (including fraud relative to an employees right to benefits, litigation or in anticipation of litigation, or criminal or alleged/suspected criminal activity). The personal identifying information includes personal identifier information for linkage purposes. Information obtained pursuant to this subdivision shall not be displayed, disclosed, or sold except to either their clients, or to other individuals or entities that are determined by the Commission to be permissible recipients of the information, for their own use of those individuals or entities on a business-to-business basis.

- D. To the extent permitted by law, this section supersedes the Federal and State Credit Reporting Act; the Financial Modernization Act of 1999 and any other act now existing or which may be promulgated in the future limiting access to any record by any licensed professional investigator for any reason deemed necessary by a licensed professional investigator and ratified by the Special Master.
- E. Upon approval at the *ex parte* inquiry by the Special Master, the licensee becomes immune from prosecution for making said inquiry as will be evidenced by the issuance of a formal writ of assistance (writ) to the licensee by the Special Master. The *ex parte* application will be accompanied by prepayment of the necessary fees to cover the Commission's cost of processing, review and personal hearing of the *ex parte* arguments for the need to grant such a writ of assistance as may be determined from time to time by the Commission. Any such application will be given consideration by the Special Master forthwith.
- F. Failure of any person or entity to comply forthwith the writ of assistance issued by a Special Master hereunder shall result in fines of not more than *{insert dollar amount}* for each failure to comply. Upon favorable granting of the writ, the designated licensed professionals authority for access is immediate, but is subject to subsequent challenge after exercising of the authority granted in the application for its good faith offering to the Commission for the issuance of the writ.
- G. If assets are the focus and are located, the Commission can freeze the use thereof upon notification. Assets that have been secreted away but have been located as a result of the issuance of the writ may be transferred from the location of deposit into a Commission trust fund. The Commission shall also allow for the use of the located asset(s) for day to day needs of the subject of the writ by the controlling designated Special Master. Interest accrued on the funds held in trust shall inure to the benefit of the determined beneficiary of the funds when all legal matters have been settled.
- H. The appointment of a Special Master because of the presumed urgency and importance of the matter may be appointed by spontaneous electronic communication when necessary. The fees generated by application for a writ will be held in trust to cover costs incurred in the management and implementation of this program and are in addition to any other fees provided herein.
- I. The Special Master in approving an application for access to records upon *ex parte* application envelopes the applicant in absolute criminal and civil immunity for taking the required actions or engaging in the necessary activity, including and not limited to pretext acquisition, inquiry, undercover methods or acquisition by misrepresentation of the desired information so long as the pretext and misrepresentation does not involve any stated or implied association with any federal, United States Military, state, county, or municipal law enforcement agency notwithstanding any current or subsequent prohibition promulgated by the Federal government or other states of this nation now existing or admitted to Statehood hereafter.
- J. The criminal and civil immunity is automatically withdrawn if by a subsequent determination of the Special Master a showing the *ex parte* application was not made in good faith of a need to preserve relevant, probative need to know for the preservation of potential evidence or of assets or other related information in a probable or anticipated Criminal or Civil procedure at either the Federal or State(s) jurisdiction. If the application is shown not to have been made

in good faith, all information derived therefrom is rendered moot and cannot be used as evidence in any fashion nor can any reasonably determined direvity information therefrom. A withdrawal of the immunity subjects the applicant to Criminal and Civil sanctions as provided by the Criminal and Civil Codes of this State as well as punitive monetary damages to the damaged party(s) as determined by any lawful court of this nation having jurisdiction now existing or may be admitted to Statehood in the future. All assets frozen or seized during the use of the writ are to be returned to the owner forthwith with accrued interest.

- K. The Special Master will be compensated from the fees generated from the application for exparte hearings from licensees under this Act.
- L. Upon a showing the located secreted assets impoundment is not warranted said impounded or frozen funds shall be released forthwith.
- M. A Writ of Assistance will be designed by the Special Master to be in either printed or electronic form as to preclude the forgery thereof and will not have any effect unless the gold seal thereon is properly imprinted by the authorizing Special Master's imprinter or electronic signature thereof in the instance of an e-writ of assistance.
- N. Application to a Special Master may be made only by those so licensed under this Act and so granted access to a Special Master. Not all licensees under this Act may be enrolled as an applicant for assistance of the Special Master hearing.
- N. A licensee may not make application to a Special Master for an exparte hearing unless such licensee is an enrolled special master applicant. The fees, rules and regulations regarding the qualifications for a licensee to become enrolled to make application to a Special Master shall be promulgated by the Commission.

Section 27. Effective Date / Transition

- A. On or before *{insert date}*, the Commission [or Director, depending on which option is chosen] shall promulgate and make available the Application for Licensure.
- B. The requirement to obtain a license as required by this Act shall take effect on *{insert later date}*.
- C. This Act shall take effect on *{insert later date}*.

Section 28. Sunset

- A. This Act shall remain in effect only until *{insert date, ex: 5 years in the future}*, and as of that date is repealed, unless a later enacted statute, that is enacted before *{insert date, ex: 5 years in the future}*, deletes or extends that date.

Section 29. Construction and Severability

- A. The provisions of this Act shall be liberally construed to effectuate the purposes thereof. The provisions of this Act shall be severable and if any phrase, clause, sentence, or provision of

this Act is declared to be contrary to the constitution of any state or to the Constitution or laws of the United States, or if the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Act and the applicability thereof to any government, agency, entity, person, or circumstance shall not be affected thereby, and the remainder of the Act shall remain in full force and effect as to the remaining provisions of the Act.

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