

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 #2 Licensed Professional Investigator Law

Section 1. Short Title.

This article shall be known and may be cited as the "Licensed Professional Investigators' Law".

Section 2. Legislative Declaration.

The general assembly hereby finds, determines, and declares that it is in the public interest to exercise the police power of the state to protect the public by regulating professional investigators in this state by requiring them to be licensed as required under this article. The general assembly further finds, determines, and declares that the purpose of this article is to require qualifying criteria in a professional field in which unqualified individuals may injure the public and that this article will contribute to the safety, health, and welfare of the people of {insert state}.

Section 3. Definitions.

As used in this article, unless the context otherwise requires:

- (1) "*Applicant*" means any person seeking to be licensed under the provisions of this article.
- (2) "*Criminal history record*" means information collected by state or federal criminal justice agencies on individuals, which information includes identifiable descriptions and notations of arrests, detentions, indictments, bills of information, or any formal criminal charges, and any disposition arising therefrom, including sentencing and criminal correctional supervision and release. "Criminal history record" does not include intelligence for investigatory purposes, nor does it include any identification information that does not indicate involvement of the individual in the criminal justice system.
- (3) "*Director*" means the director of the division of registrations in the department of regulatory agencies.
- (4) "*Division*" means the division of registrations in the department of regulatory agencies.
- (5) "*FBI*" means the federal bureau of investigation of the United States Department of Justice.
- (6) "*In camera review*" means a hearing or review in a courtroom, hearing room, or chambers to which the general public is not admitted. After such hearing or review, the content of the oral and other evidence and statements of the judge and counsel shall be held in confidence by those participating in or present at the hearing or review, and any transcript of the hearing or review shall be sealed and not considered a public record until and unless its contents are disclosed by a court or administrative law judge having jurisdiction over the matter.
- (7) "*Licensee*" means any person to whom a license is granted under the provisions of this article.
- (8) "*Person*" means any individual.

(9) (a) "*Professional investigator*" means any person or legal entity in *{insert state}* that holds out to the general public and engages in the business of furnishing, or that accepts employment to furnish, or agrees to make or makes any investigation for the purpose of obtaining information with reference to any of the following:

- (i) crimes, allegations of criminal conduct, or wrongs committed;
- (ii) background investigations or pre-employment investigations;
- (iii) the location or disposition of property;
- (iv) securing information to be used before any judicial or administrative entity;
- (v) missing persons; or
- (vi) civil or domestic matters.

(b) "*Professional investigator*" includes any person or entity that uses the term "professional detective".

(c) "*Professional investigator*" does not include any of the following:

- (i) employees or agents of insurance entities regulated under *{insert section number}*, including but not limited to insurance adjusters or claims agents, who make appraisals for the purpose of evaluation or settling claims for property damage or personal injuries;
- (ii) any officer or employee of the United States, this state, or any political subdivision of either while such officer or employee is engaged in the performance of official duties within the course and scope of employment with the United States, this state, or any political subdivision of either;
- (iii) any person engaged exclusively in the business of obtaining and furnishing information as to the financial rating or creditworthiness of persons;
- (iv) an attorney-at-law practicing law in this state and not acting as a professional investigator or any employee of that attorney or such attorney's law firm that is paid wages by the attorney or law firm;
- (v) a person or corporation that employs persons who do investigative work in connection with the affairs of such employer exclusively and that have an employer-employee relationship with such employer. No such person or corporation nor any employee thereof shall be required to be licensed under this article.
- (vi) a person engaged as a professional employment-placement consultant conducting face-to-face interviews with an applicant or candidate for employment;
- (vii) a certified public accountant practicing as a certified public accountant in this state and any employee of such certified public accountant that is paid wages by the certified public accountant or the certified public accountant's firm;

(viii) a collection agency or a debt collector regulated under the provisions *{insert section number}*;

(ix) clerical or administrative personnel of a professional investigator licensed pursuant to this article or the investigative agency of such licensed professional investigator;

(x) a genealogist;

(xi) a process server;

(xii) a bail bonding agent or professional cash bail agent licensed under the provisions of *{insert section number}*.

Section 4. License Required - Fees.

(1) (a) subject to the provisions of paragraph (b) of this subsection (1), no individual shall engage in activities as a professional investigator or advertise in any publication or represent himself or herself as a professional investigator unless he or she first obtains a license from the division and unless such license is in full force and effect and in such individual's immediate possession. No individual shall continue to act as a professional investigator if such license has been suspended or revoked or has expired.

(b) No later than *{insert date}*, every person who engaged in activities as a professional investigator in this state on or after the effective date of this article and wishes to continue doing so shall apply to the director for a license under the provisions of this article. Any person filing a timely application may continue to engage in activities as a professional investigator pending a final determination of the application. (2) An applicant for a license as a professional investigator shall follow the procedures provided in *{insert section number}* and any other procedures required by the director. All applicants shall pay a nonrefundable license fee to be determined by the director, which fee shall be adequate to cover the direct and indirect expenses incurred for implementation of the provisions of this article. Such license shall be renewable pursuant to the provisions of this article and upon payment of said fee.

[Option A – Oversight by a Director within State Government]

Section 5. Powers and Duties of the Director.

(1) In addition to all other powers and duties conferred or imposed upon the director by this article or by any other law, the director:

(a) May promulgate rules pursuant to the provisions of *{insert section number}*, to govern the regulation of professional investigators and to carry out the purposes of this article;

(b) (i) subject to the provisions of subparagraph (ii) of this paragraph (b), to aid in any hearing or investigation instituted pursuant to this article, shall have the power to issue subpoenas to compel the attendance and testimony of witnesses and the production of books, client records, papers, and copies thereof relevant to the investigation activities of any professional investigator.

(ii) if the director issues a subpoena for any information under subparagraph (i) of this paragraph (b) that is subject to the attorney-client privilege, such information shall continue to be privileged and not admissible in any legal action or administrative proceeding and is not subject to any discovery pursuant to the rules of civil procedure, criminal procedure, or administrative procedure, unless: (a) the entity or person for whom the information was prepared waives the attorney-client privilege; or (b) a court of record, or, pursuant to *{insert section number}*, an administrative law judge, after an in camera review, determines that the subpoenaed information is specifically relevant to any violation of the provisions of this article. If a court of record or an administrative law judge makes such determination, the court or administrative law judge shall direct that all personal identifying information in such information be redacted except for information specifically relevant to any violation of the provisions of this article.

(c) Is authorized to apply for injunctive relief, in the manner provided by the *{insert state}* rules of civil procedure, to enforce the provisions of this article or to restrain any violation thereof. In such proceedings, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation thereof.

[Option B – Oversight by a Commission]

Section 6. Commission on Licensed Professional Investigations

- A. There is hereby created the Commission on Licensed Professional Investigators, hereinafter referred to as the Commission, which consists of *{insert number, ex: nine (9)}* members, each of whom shall possess good moral character and be an active licensee both at the time of appointment by the Governor of this State with the confirmation of the *{enter house or houses, ex: Senate}* and throughout their service on the Commission.
- B. The Commission on licensed professional investigators 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.
- C. 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.
- D. *{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.
- E. *{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.

- F. 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.
- G. Subsequent to the initial appointments as provided in subdivision [F], 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
- H. 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.
- I. 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.
- J. 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.
- K. 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.
- L. 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.
- M. 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.
- N. Each member of the Commission shall be compensated at a rate not to exceed what would be available in the professional 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 filed with it or, on its own initiative, or instances of suspected violations of this Act.

- O. 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.
- P. 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.

Section 7. Issuance or Renewal of License - Fingerprint-Based Criminal History Record Check Requirement.

(1) Except as otherwise provided in this article, the director shall issue a license as a professional investigator to, or renew a license as a professional investigator for, any individual who pays the required fee and furnishes evidence satisfactory to the director that such individual:

- (a) Is eighteen years of age or older;
- (b) Is a citizen of the United States or a legal alien holding proper documentation to work in the United States;
- (c) Has not been convicted of or entered a plea of nolo contendere or guilty to any felony;
- (d) Has not been declared by any court of competent jurisdiction to be incompetent by reason of mental defect or disease or, if such declaration has been made, it has been rescinded.

(2) If an applicant provides inadequate information to allow the director to ascertain whether the applicant satisfies the qualifications for licensure, the applicant may be required either to provide

additional information for the purpose of the application, or to submit to an interview for this purpose, or both.

(3) An applicant or licensee shall file with the director an application form for a license, or renewal thereof, provided by the director. The form shall require such relevant information about the applicant's character, experience, and background as the director may determine and shall be subscribed and sworn to by the applicant before a notary.

(4) In order to obtain information necessary to determine matters relating to licensure under this article or the renewal thereof, the director shall promulgate rules requiring that applicants and licensees have a *{insert state}* bureau of investigation fingerprint-based criminal history record check and a national fingerprint-based criminal history record check completed by the FBI. In addition to the application or renewal fee for a license under this article, the director shall require applicants and licensees to pay the cost of the criminal history record checks required under this subsection (4).

Section 8. Disciplinary Actions - Grounds for Discipline.

(1) The director may deny, suspend, or revoke the license of, or place on probation, an applicant or licensee if such applicant or licensee:

(a) Violates any order of the division or the director or any provision of this article or the rules established under this article;

(b) Fails to meet the requirements of [insert section number] or uses fraud, misrepresentation, or deceit in applying for or attempting to apply for a license;

(c) Is convicted of or has entered a plea of nolo contendere or guilty to a felony; except that the director shall be governed by the provisions of *{insert section number}*, in considering such conviction or plea;

(d) Fails to maintain and preserve the secrets and confidences of a client. A professional investigator shall not divulge to anyone, other than the client, or to such persons as his or her client may direct, or as may be required by law, any information acquired during the engagement that may compromise the client or assignment to which the professional investigator has been assigned by the client.

(e) Uses false, deceptive, or misleading advertising;

(f) Misrepresents his or her services to a client or prospective client;

(g) Is addicted to or dependent upon alcohol or any controlled substance, within the meaning of *{insert section number}*, or is a habitual user of said controlled substance, if the use, addiction, or dependency is a danger to clients or prospective clients;

(h) Employs any person as a professional investigator that fails to meet the requirements of this article; or (i) has incurred disciplinary action related to professional investigation in another jurisdiction. Evidence of such disciplinary action shall be prima facie evidence for denial of licensure or other disciplinary action if the violation would be grounds for such disciplinary action in this state.

(2) Any proceeding to deny, suspend, or revoke the license of or place on probation an applicant or a licensee shall be conducted pursuant to *{insert section number}* and *{insert section number}*. The director shall use an administrative law judge employed by the division of administrative hearings in the department of personnel to conduct hearings. Any person whose license is denied, suspended, or revoked or who is placed on probation shall pay for the reasonable and necessary costs incurred in bringing and conducting such proceeding.

(3) (a) When a complaint or an investigation discloses a violation of this article that, in the opinion of the director, does not warrant formal action but which should not be dismissed as being without merit, a letter of admonition may be sent by certified mail to the professional investigator against whom the complaint was made and a copy thereof to the person making the complaint, but, when a letter of admonition is sent by certified mail by the director to a professional investigator complained against, such professional investigator shall be advised that he or she has the right to request in writing, within twenty days after proven receipt of the letter, that formal disciplinary proceedings be initiated against the professional investigator to adjudicate the propriety of the conduct upon which the letter of admonition is based. If such request is timely made, the letter of admonition shall be deemed vacated, and the matter shall be processed by means of formal disciplinary proceedings.

(b) A professional investigator may respond in writing to any letter of admonition issued under paragraph (a) of this subsection (3) if such response is received by the director within twenty days after proven receipt of the letter of admonition. Such a written response shall not be deemed a request for formal disciplinary proceedings under paragraph (a) of this subsection (3) unless such a request for initiation of formal disciplinary proceedings is clearly set forth in the written response. Such written response shall be placed in the formal records of the director relating to the licensing of the professional investigator involved.

Section 9. Penalties.

(1) Any person who violates the provisions of this article or the rules of the director promulgated under this article may be penalized by the director upon a finding of a violation pursuant to *[insert section number]*, as follows:

(a) In the first administrative proceeding against the person, a fine of not less than three hundred dollars but not more than five hundred dollars per violation;

(b) In any subsequent administrative proceeding against the person for transactions occurring after a final agency action determining that a violation of this article has occurred, a fine of not less than one thousand dollars but not more than two thousand dollars.

(2) Any person who is found to have committed a violation pursuant to subsection (1) of this section shall pay for the reasonable and necessary costs incurred in bringing and conducting such administrative proceeding.

(3) In addition to the penalties provided in subsection (1) of this section, the director, upon a finding of a violation, may deny, suspend, or revoke the license of, or place on probation, a professional investigator or take other disciplinary action as provided in *{insert section number}*. If the license of a professional investigator is revoked, the director shall not issue a new license

as a professional investigator to the person whose license is revoked until at least one year has elapsed between the date of revocation and the date of application for a new license as a professional investigator.

(4) Any person who engages in activities as a professional investigator shall maintain all applicable documents, records, and other items, for the current year and the preceding four years required to be maintained by this article or by the rules of the director.

Section 10. Cease and Desist Orders.

(1) If, as the result of an investigation of a complaint by any person or of an investigation on the director's own motion, the director determines that any person is acting or has acted without the required license or is in violation of this article, the director may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts cease forthwith. The person so ordered may request a hearing on the question of whether any violation occurred if such request is made within thirty days after the date of service of the order to cease and desist. The hearing shall be conducted in accordance with the provisions of *{insert section number}*.

(2) In the event that any person fails to comply with a cease and desist order, the director may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested the attorney general or district attorney shall bring, a suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the order.

(3) No stay of a cease and desist order shall be issued before a hearing therein involving both parties.

(4) Matters brought before a court pursuant to this section shall take precedence over other matters on the court's calendar.

Section 11. Contracts for Professional Investigation Services - Writing Required.

(1) Upon request of a client prior to engaging in any activity as a professional investigator, a professional investigator shall provide a written contract, engagement letter, or form of agreement to the client signed by both the professional investigator and the client, stating at least the following terms:

(a) Type of service to be provided;

(b) Date of agreement or contract; and

(c) The responsible party that will receive the professional investigator's report.

(2) No action may be maintained by a professional investigator for breach of a contract or agreement to provide professional investigation services or for the recovery of compensation for services rendered under such contract or agreement if the professional investigator has failed to comply with the provisions of this article.

(3) Any written contract provided pursuant to this section shall also contain a written statement that professional investigators are regulated by the director of the division of registrations in the department of regulatory agencies.

Section 12. Unlawful Acts - Penalty.

(1) It is unlawful for any person to:

(a) Provide professional investigation service without possessing a valid license or while a license has been revoked or suspended;

(b) Employ an individual to perform the duties of a professional investigator that is not the holder of a valid license under this article;

(c) Designate an individual as other than a professional investigator to circumvent the requirements of this article;

(d) Knowingly make any false statement or material omission in any application filed with the director;

(e) Falsely represent that a person is the holder of a valid license under this article;

(f) Violate any provision of this article or any rule of the director promulgated pursuant to this article.

(2) It shall be unlawful for any professional investigator to knowingly:

(a) Make any statement that would reasonably cause another person to believe that the professional investigator functions as a sworn peace officer, or other official of the state, or of any of its political subdivisions, or an agency of the federal government; or

(b) Possess a license issued under this article to another person.

(3) Any person that violates any provision of this section commits a class 1 misdemeanor and shall be punished as provided in *{insert section number}*.

Section 13. Advisory Committee - Repeal.

(1) The director shall appoint an advisory committee to make recommendations concerning professional investigators, which committee shall serve at the request and pleasure of the director and shall consist of at least two professional investigators qualified for licensure under this article, at least one attorney licensed to practice law in this state, and at least one level [i] or level [ia] peace officer. The members of the advisory committee shall receive no compensation but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties under this article.

(2) This section is repealed, effective *{insert date}*. Prior to such repeal, the advisory committee created in subsection (1) of this section shall be reviewed as provided in *{insert section number}*.

Section 14. Immunity.

Any person acting as a consultant to the director, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him or her for acts occurring while acting in such capacity as a consultant, witness, or complainant, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken was warranted by the facts.

Section 15. Fees - Cash Fund.

All fees collected pursuant to this article shall be transmitted to the state treasurer, who shall credit the same to the division of registrations cash fund created pursuant to *{insert section number}*. The general assembly shall make annual appropriations from the division of registrations cash fund for expenditures of the division incurred in the performance of its duties under this article.

Section 16. Judicial Review.

The court of appeals shall have initial jurisdiction to review all final actions and orders that are subject to judicial review. Such proceedings shall be conducted in accordance with *{insert section number}*.

Section 17. Special Master

- A. The Commission [or Director, depending on the option selected] 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 exparte 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 *exparte* 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 *exparte* application will be accompanied by prepayment of the necessary fees to cover the Commission's cost of processing, review and personal hearing of the *exparte* 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 *exparte* 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 exparte 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 18. Repeal of Article - Review of Functions.

Unless continued by the general assembly, this article is repealed, effective *{insert date}*, and those powers, duties, and functions of the division specified in this article are abolished. The provisions of *{insert section number}*, concerning a wind-up period, an analysis and evaluation, public hearings, and claims by or against an agency shall apply to the powers, duties, and functions of the division specified in this article.

Section 19. Sunset Review of Advisory Committees.

(1) The following dates are the dates for which the statutory authorization for the designated advisory committees is scheduled for repeal: *{insert date}*: the advisory committee for professional investigators, appointed by the director of the division of registrations under *{insert section number}*.

Section 20. Jurisdiction.

(1) The court of appeals shall have initial jurisdiction to review all final actions and orders appropriate for judicial review of the director of the division of registrations as provided in section *{insert section number}*.

Section 21. General Assembly Review of Regulatory Agencies and Functions for Termination, Continuation, or Reestablishment.

The following agencies, functions, or both, shall terminate on *{insert date}*: the licensing of professional investigators by the director of the division of registrations in accordance with *{insert section number}*. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the division of registrations cash fund not otherwise appropriated, to the department of regulatory agencies, for allocation to the division of registrations, for the fiscal year beginning [insert date], the sum of _____dollars (\$), or so much thereof as may be necessary, for the implementation of this act.

Section 22. Effective Date - Applicability.

(1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to *{insert section number}*of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to acts occurring on or after the applicable effective date of this act.

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