

# A Proposal for Professionalism of the Legal Investigator

BE IT MANDATED by the Senate and Assembly of (\_\_\_INSERT STATE\_\_\_) Legislature

(Year) Regular Session

To: Judiciary A

By: Representatives ( \_Sponsor)

House Bill #

HOUSE BILL -# (As Introduced) (Year) Regular Session

## PROLOGUE:

A mandate to provide for the regulation and licensing of private and legal investigators, to define certain terms; to authorize the assessment of an administration application fee, an examination fee and a license fee; to provide for the renewal of such license and for the assessment of a renewal license fee; to provide for the investigation of and to administer discipline for violations of the activity described within this act and revocation of such licensees license upon certain violations; to create the (insert state) Private and Legal Investigation Commission ( The Commission) and provide for the organization and rules of The Commission; to authorize the issuance of a fingerprint identifier, PIN actuated electronic storage capable smart identification card which can be instantly canceled on order of The Commission; to authorize The Commission to investigate instances of reported, perceived, alleged or suspected violations of this mandate and to provide penalties therefor and for related purposes for the enforcement and compliance with this mandate.

## SECTION 1.

This mandate shall be known and may be cited as the "Private Investigators/Legal Investigators Licensing, Educational and Regulatory State Mandate."

## SECTION 2.

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

(a) "Licensee" means any person or entity or representative thereof who engages in the business or accepts employment to obtain, furnish, preserve, document or publish perceived evidentiary or competitive commercial or industrial information; or report on the 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; or the location, accumulation, disposition or recovery of lost or stolen property of any type or kind now existing or which may be discovered and exist in the future by alleged wrongful criminal or civil activity; or the cause or responsibility for fires, libels, slanders, losses, purported accidents, damages or alleged injuries to persons or entities or to property by alleged criminal or civil activity; or 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 regardless of the nature or reason for distribution or dissemination.

(b) "Principal Corporate Officer" means the designated Chief Executive Officer, President, Vice President, Treasurer, Secretary or Comptroller, as well as any other responsible officer or executive employee who performs administrative or field activity functions for the corporation corresponding to those performed by the foregoing of a licensee under this mandate.

- (c) "Qualified Manager" means an individual who is immediately responsible for the supervision of staff and other licensees activity under this mandate within the office of a company or corporate licensee.
- (d) " Qualified Branch Manager" means the individual who is immediately responsible for the operation of a branch office of a company or corporation licensee and licensed under this mandate.
- (e) "Supervisor" means the individual who is immediately responsible for the activities of a staff or field investigator of a company or corporation licensee and licensed under this mandate.
- (f) " Staff or Field Investigator" means any person who performs those duties of a licensee under this State at the direction and under the supervision of a licensee or a designated officer or designated supervisor of the licensee.
- (g) "Intern" means any person who performs those duties of a licensee under this State mandate either during or post graduate study for licensure under this mandate.
- (h) "Apprentice" means any individual who performs those duties of a licensee under the direct supervision of a licensee of this mandate in the deliberative process of evaluating this profession as a lifetime career.
- (i) "Branch office" means any office of a licensee company or corporation or other artificial entity within this state other than its principal place of business within this state.
- (j) "Commission" means the Private and Legal Investigation Commission as describe in the prologue and subsequently in this mandate.
- (k) "Identification Card" means an electronic capable pocket smart card issued by the commission evidencing that the holder has met the minimum qualifications required by this mandate to perform the highly skilled duties of a licensee in this state.
- (l) "Licensee Company" means any person or entity or representative thereof who engages in the business or accepts employment to obtain or furnish, preserve or publish perceived evidentiary facts.
- (m) "Legal Investigator" means any person who accepts employment from any licensed attorney to perform one or more services as described in the prologue to this mandate.
- (n) "Private Investigator" means any person who accepts employment from any insurance company or their designated representative, or the public at large to perform one or more services as described in prologue to this mandate.
- (o) "Qualifying manager " means a principal corporate officer meeting the qualifications set forth in this act for operating as a licensee or a licensee company or corporation.
- (p) "Person" or "entity" means any individual, firm, association, company, partnership, corporation, nonprofit organization, institution, or similarly constituted group.

### SECTION 3. (General Requirements)

- (1) Except as otherwise provided in this mandate, it shall be unlawful for any person to act as a licensee, licensee company, corporation or other artificial entity, private investigator or legal investigator, company officer or corporate officer, qualified manager, qualified branch manager, or other related activity without first having

obtained a qualifying license from the commission.

(2) An individual or entity (which/who) has been continually engaged in activity to do business on a full/part-time basis, as determined by the commission, for the (-# of) years prior to (mmddyy) shall be issued a license to continue to perform those services as a individual licensee, licensee company or corporation, licensed private investigator or legal investigator, qualified manager, qualified branch manager, or designated executive of a licensee governed by this mandate (at the sole discretion of the commission,) shall be deemed to already meet or exceed the requirements set forth in Section 6 of this act by prior experience as enumerated in Section 6

(3) Every licensee, licensee company, private investigator or legal investigator licensed in accordance with this mandate by the commission shall maintain a physical place of business in this state other than a United States Postal or Private Commercial Mail Drop or Depository.

(4) A licensee or licensee company or corporation or other artificial entity that maintains more than one (1) place of business within the state, shall apply for and obtain a branch office license for each branch office in addition to the individual or company license for the additional place of business.

(5) Every licensee, licensee company, shall maintain errors and omissions insurance coverage and professional liability coverage's as well as personal injury and property damage insurance coverage in the following minimum amounts: Per incident, One million Five Hundred Thousand Dollars (\$1,500,000.00), Three Million dollars (\$3,000,000.00) in the aggregate. Proof thereof shall be provided to the commission prior to or concurrent with licensure issuance or renewal under this mandate.

(6) The Commission will be shown as an additional named insured and a certificate showing the required valid coverage with a provision for a minimum of 30 days certified receipt written notice of potential cancellation prior to effective cancellation shall be provided to the commission. In the event a substitute policy of coverage is not formally in place or the notice of cancellation is not withdrawn by written certified mail to the commission within that thirty period, the licensee's license is automatically revoked until such time and place acceptable proof of such insurance is furnished the commission. In the alternative a cash deposit with the commission to be placed in trust in amounts equal to the above requirements may be substituted for the required policy of insurance coverage. Interest accrued on the trust funds will inure to the benefit of the individual licensee which deposited the trust funds.

(7) In the event of cancellation of insurance coverage, the commission shall notify the general public by immediate official publication thereof in the commissions official printed or electronic journal or web site and through a recognized publication of general interest with an aggregate circulation equaling 90 % of this States general population as well as the printed or electronic law journals with a circulation, readership, impressions equal to 95% of the licensed and admitted legal practitioner(s) within the State. A licensee who does not provide proof of insurance until after publication as hereinabove required, shall be required to reimburse the commission all costs of the required publication notifications prior to reinstatement of the licensee's license.

(8) Any dispute shall be adjudicated following payment of these costs and license reinstatement. A licensee under this mandate will display such a certificate of insurance prominently within public view within the licensee 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.

(9) A litigant, after having exhausted all other forms of personal service effort on a licensee under this mandate with service of process may substitute serve the commission. Such substituted service shall be deemed valid personal service upon the licensee under this mandate. 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

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 by publication in any form.

#### SECTION 4. (The Application)

(1) An application for a license as a licensee, licensee company/corporation, private investigator or legal investigator, qualified manager, qualified branch manager, or corporate officer of a licensee or other similarly related activity shall be filed with the commission on the prescribed form. The application shall include:

- (a) The full name and business address of the applicant (s);
- (b) Three (3) sets of classifiable electronic or print fingerprints or both as then required;
- (c) Three (3) credit references from lending institutions or business firms with whom the subject has established a credit record; and
- (d) A list of all convictions and pending charges of a felony or misdemeanor in any global jurisdiction;
- (e) If the applicant is a partnership, the name and residential address of each partner; or
- (f) If the applicant is a company/ corporation, the name and residential address of the qualifying manager/ branch manager or executive(s);
- (g) The primary name and three alternative names under which the applicant intends to do business depending on availability in descending order;
- (h) The address of the principal place of business and all branch offices of the applicant within this or any other state of the United States of America or it's territories, possessions or protectorates;

(2) As to each individual applicant, the following information:

- (a) Full name;
- (b) Date and place of birth;
- (c) All residences during the immediate past five (5) years;
- (d) All employment or occupations engaged in during the immediate past five (5) years;
- (e) Three (3) sets of classifiable electronic or print fingerprints or both as then required;
- (f) Three (3) credit references from lending institutions or business firms with whom the subject has established a credit record; and
- (g) A list of all convictions and pending charges of a felony or misdemeanor in any global jurisdiction;

(3) If the applicant is a corporation, the following additional information:

- (h) The correct legal name of the corporation;

- (i) The state and date of incorporation;
  - (j) The date the corporation qualified to do business in this state;
  - (k) The address of the corporate headquarters, if located outside this state; and
  - (l) The name of two (2) principal corporate officers other than the individual licensee, qualifying agent, qualified branch manager, and the business address of each, as well as the residence address of each and the office held by each agent and/or qualified branch manager and or executive(s) in the corporation; and
  - (m) Such other information as the commission may reasonably require.
- (3) The application shall be subscribed and sworn to:
- (a) By the applicant, if the applicant is an individual applicant; or
  - (b) By each partner, if the applicant is a partnership; or
  - (c) By the qualifying agent or qualified branch manager, or designated executive(s) if the applicant is a company/corporation.
- (4) Any individual signing the application must have qualifications equal to or exceeding those as required in this mandate and;
- (a) Be at least twenty-one (21) years of age;
  - (b) Be a citizen of the United States or a resident alien;
  - (c) Not have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease unless a court of competent jurisdiction has since declared him competent and certified as having remained competent for each of the five (5) years preceding application;
  - (d) Not be suffering from habitual drunkenness or narcotics addiction or dependence;
  - (e) Be of good moral character; and
  - (f) Pass the written and oral examination to be administered at least twice annually by the commission designed to measure knowledge and competence in the field of the licensee, licensee company/corporation, private investigator or legal investigator, qualified manager, qualified branch manager, or executive(s) of the licensee company/ corporation, and other similarly related activity;

#### SECTION 5. (Testing)

The commission will develop, print and administer several different thorough written multiple choice, essay and oral exam questions for licensure twice yearly in each major city within this state. A passing grade of not less than % overall and %per segment will be considered minimal for licensure under this mandate.

The multi day, multi part exam will focus on but not necessarily be limited to the following individual areas of knowledge and skill.

Accident scene investigation and reconstruction  
Aviation scene investigation and reconstruction  
Crime scene investigation and reconstruction  
Investigative skills and knowledge in either criminal or civil matters  
Ethics  
Environment  
Interviews and Statements  
Recovery and documentation of Civil evidence  
Recovery and documentation of Criminal evidence.  
Private or Legal Investigative constraints, scope of authority.  
Surveillance  
The Private and Legal Investigative Mandate of this state  
Insurance Policy and application of coverage including AOE/COE.  
The Federal Employees Labor Act. (FELA)

The oral part of the exam will be administered by a panel of three current licensees as selected by the commission. The panel members will have at least ten years of experience each in the field of the questions administered within the oral exam.

#### SECTION 6. ( Licensure and Testing prerequisites)

(1) Each applicant for a license as a individual licensee, licensee company/corporation, private investigator, legal investigator, qualified manager, qualified branch manager, executive(s) of a corporation engaged in this or similar activity must

(a) Be at least twenty-one (21) years of age;

(b) Be a citizen of the United States or a resident alien;

(c) Not have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease unless a court of competent jurisdiction has since declared him competent for each of the five (5) years preceding;

(d) Not be suffering from habitual drunkenness or narcotics addiction or dependence;

(e) Be of good moral character; and

(f) Posses a diploma of four years (4) 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 it's 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

(g) The applicant may confine studies to individual sub specialties of any of the fields of professional para investigative activity hereinabove designated. An individual or entity who has been continually engaged in activity to

do business on a full/part-time basis, as determined by the commission, for the (\_# years) prior to (mmddyy) as a licensee, licensee company/corporation, private investigator or legal investigator, qualified manager, qualified branch manager, corporate executive of a licensee or similarly related activity may continue to perform such services as designated above subject to completion of the required course of study and successfully complete this States commission administered exam for licensure in overall competency or specialized competency in an individual skill field on or before (insert date) or.

(h) Possess at least five (5) years' experience satisfactory to the commission, with any federal, United States Military, state, county, or municipal law enforcement agency; and possess at least three (3) additional years of experience as a qualified manager, qualified branch manager or supervisor, or executive administrator with a licensee, licensee company/corporation; and pass an examination to be administered at least twice annually by the commission, designed to measure knowledge and competence if the applicant for licensure as a licensee, licensee company or entity as a private investigator or legal investigator, qualified manager, qualified branch manager, executive(s) or similarly related activity; and

(a) Provide a notarized statement that the majority of his investigation services are performed for licensed attorneys or insurance companies; and

(b) Provide five (5) letters of recommendation from individual licensed attorneys attesting to his knowledge, competency and performance.

(3) The commission shall grant apprentice status, by correspondence from an applicant provided that the applicant is gainfully employed full time by an investigative licensee or company/corporation as hereinabove defined and licensed under this mandate. The apprentice is enjoined from working without the direct moment by moment supervision of a licensed investigator, qualified manager, qualified branch manager, designated executive(s) or other similarly related licensed professional.

(4) An apprenticeship may not commence until the sponsoring licensee company/corporation has submitted a notice of intent to sponsor. Such notice shall be by written endorsement to the application of the apprentice for apprenticeship.

(5) An apprentice status shall be limited to not more than twenty four (24) consecutive months of employment and a person shall be able to apply for apprentice status only twice. After twenty four (24) consecutive full time months of gainful investigative employment or 4000 hours of investigative activity, the apprentice may apply for admission to an accredited course of academic study leading to licensure in any of the skill areas as designated and can maintain his current position of apprentice employment if enrolled in a course of academic study leading to possible licensure.

(6) The apprentice or intern status may be maintained until successful completion of this States exam for licensure so long as the academic course of study and this States licensure exam is successfully completed within nine (9) consecutive years of endeavor. Apprentice or intern status is transferable by formal application to the commission by the apprentice to another licensee. If the original sponsor of the apprentice ceases doing business, becomes disabled or deceased, the apprentice shall be granted an automatic transfer to another sponsor so long as the new sponsor is licensed in any of the designated disciplines and is in good standing with the commission. The application for transfer of apprenticeship must be made within 180 calendar days. This time limitation maybe extended upon a showing of need by the apprentice.

(7) 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. Sponsors shall assume a training status by providing direction and control of the apprentice. No sponsor may sponsor more than

six (6) apprentices's at one (1) time and apprentices are not allowed to perform any independent field activity. The sponsor shall notify the commission and shall certify completion of training or the termination of the apprentice within fifteen (15) days of such completion or termination action. The sponsor shall report to the commission each and every six calendar month period from the date of hire, the continued progress of each apprentice continuing to be sponsored by said sponsor. The report shall be in such form as may be required by the commission, but shall include as a minimum the following:

(a) The inclusive dates of the apprenticeship;

(b) A narrative of no more than 1000 words explaining the primary duties, types of experiences gained, and the scope of the training received, including attendance at nationally recognized investigative seminars; accredited academic continuing education courses of study and

(c) 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.

(d) If the apprentice shall fail to complete the required course of activity through to licesure upon the second approved apprenticeship endeavor, said individual shall thereafter be barred from performing services as regulated by this mandate, unless application for a third apprenticeship position is made; but said application must be subsequent to 10 years following termination of the individuals last sanctioned apprenticeship under this act and mandate.

#### SECTION 7. (Duties of the Commission)

(1) Upon receipt of an application for a license, accompanied by nonproratable and non refundable application fee, the commission shall:

(a) Conduct an investigation to determine whether the statements made in the application are true;

(b) 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;

(c) 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.

On subsequent applications for renewal the ( insert State) Department of Public Safety or Department of Justice or both, shall, at the request of the commission, 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 shall furnish any information thereby derived to the commission.

Such application fee shall be charged and collected by the commission according to the following schedule:

Criminal and Civil Litigation Support Professional (\$) (All Fields regulated by the commission)

Private investigator license (\$) )

Legal investigator license (\$) )

Qualified branch manager, Manager or corporate Executive (\$ )

Corporate or Company License: (\$ )

Sole practitioner investigator (\$ )

Number of investigators/apprentice or interns employed by company:

Two to five (2-5) employees (\$ )per qualified field employee or (\$ ) per apprentice employee.

Over five (5) qualified field employees or apprenticeships (\$ )

(2) 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. Such license fee shall be charged and collected by the commission in accordance with the following schedule annually on the beginning of each calendar year:

Criminal and Civil Litigation Support Professional (\$ )

Private investigator license (\$ )

Legal investigator license (\$ )

Apprentice (\$ )

Qualified branch manager, Branch Manager or Qualified Manager (\$ )

Corporate or Company License: (\$ )

( Insert number of employees) Number of designated licensed professionals or apprentices investigators employed by corporation or company: (\$ )

Qualified employees (\$ ) each, no maximum annually, non-refundable or pro ratable

(3) 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 appeal, not to exceed 180 consecutive calendar days, the applicant may continue pre denial employment, apprenticeship or internship status. If appeal is denied, then the applicant can seek relief in accord with the civil laws of this state, but must cease all related professional activity for which licensure is/was sought.

(4) The commission shall issue with every investigator license an electronic smart identification card that shall contain at least the following information:

(a) Name visible only after actuation by the licensee;

- (b) Photograph, visible only after actuation by the licensee;
  - (c) Physical characteristics visible only after actuation by the licensee;
  - (d) Private investigator license number or legal investigator license number (visible only after actuation by the licensee); and
  - (e) Expiration date of license visible only after actuation by the licensee.
- (5) 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 filled by the commission and resolutions thereof. The card shall be fingerprint and PIN actuated protected.
- (6) The identification card shall be carried on the person of the licensee when engaged in the activities of the licensee and shall be displayed upon oral request by anyone 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. Special Master application ( if such a system exist within this state) need not be obtained in those matters involving information considered to be a matter of public record as defined by this state. Acquisition or viewing of written or material preserved in other manners now known or becomes known in the future that is considered a personal record, access to which might be authorized by a Special Master will not be allowed without a permanent impression being made from the identification smart card into the records of the possessor of the sought formation.
- (7) An application shall be accompanied by a notarized statement sworn by the applicant under penalty of perjury as to the identity of all investigators employed by or affiliated with such licensee with such company and designated position with the licensee corporation or company. Making a false statement shall be punishable by a civil penalty not to exceed \_\_\_\_\_Dollars ( \$ ) for each violation, assessment of and forfeiture of the maximum application fee, revocation of license or all of the foregoing. Each day of violation shall be deemed a separate violation subject to a separate penalty.

#### SECTION 8. (Valid dates of Licensure)

- (1) A license, or renewal thereof, issued under this mandate shall be valid for a period of two (2) years from the date of issuance. The commission shall provide each licensee with a renewal application form sixty (60) days prior to the expiration of the license.
- (2) The fee for the timely renewal of a license shall be set by the commission in accordance with the following schedule changeable from time to time as deemed warranted by the commission but such increase shall not exceed additional verifiable cost and the cost of living index increase(s) since the previous increase:

Criminal and Civil Litigation Support Professional ( \$ )

Private and Legal Investigation Professional ( \$ ) (All Fields regulated by the commission)

Qualified branch manager, Branch Manager, Qualified Manager or Corporate Executive ( \$ )

Corporate or Company License: ( \$ )

Sole practitioner investigator (\$ )

Number of investigators employed by company: Two to five (2-5) employees (\$ ) per qualified field employee or (\$ ) per apprentice employees

Over five (5) qualified field employees or apprenticeships (\$ ) the foregoing schedule, no maximum or minimum.

A penalty as prescribed by the commission will be assessed on any renewal application postmarked after the expiration date of the license.

(3) 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 (210) days after the date on which the commission notified the licensee that the fee is due.

#### SECTION 9. (Cessation of activity of licensee)

If the named licensee ceases to perform his duties on a regular gainful full time basis, the licensee unless precluded from doing so by reason of mental, physical health or death shall:

(a) Within thirty (30) days of cessation of gainful full-time investigative activity, notify the commission by certified or registered mail of cessation and surrender the license for cancellation; and

(b) As it may relate to employees of the licensee including but not limited to apprentices or interns must notify them they must within three (6) calendar months (180 days), obtain employment by a substitute qualifying licensee. The commission may, in its discretion, extend the period for obtaining a substitute qualifying licensee for a reasonable time upon application by the employees, apprentices or interns.

(c) For the purposes of this section, gainful full-time investigative activity is defined as forty (40) hours of compensated investigative activity in any consecutive thirty calendar (30) day period.

#### SECTION 10,

A licensee shall notify the commission in writing within fourteen calendar (14) days of,

(a) Any change in the qualifying agent/managers/employees/aprentice/intern status or as a principal corporate officer identified in its application for license;

(b) Any material change in the information previously furnished or required to be furnished to the commission;

(c) 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. A licensee company must also within thirty (30) days notify the commission of any criminal charges alleged against any designated licensed professionals, apprentices or interns employed by or affiliated with such licensee; or

(d) Any judgment received by any person for civil damages including punitive damages against any licensee, employee, apprentice or intern thereof.

#### SECTION 11.

If the ownership of a licensee company changes, the new owner, if not already a licensee, may not operate that company more than thirty (30) days after the date of such change of ownership unless within such thirty-day period the new owner submits an application for a license. If such application is submitted, the new owner may continue to operate such company until the validity of the application has been fully determined by the commission and the exam for licensure has been successfully completed. Successful completion of the licensure exam must occur within 12 calendar months.

If for any reason as determined by the commission the new owner is deemed to be unacceptable as a licensee under this mandate, then all investigative activities shall immediately cease upon certified notification to the new and prior owner.

For good cause, the commission at its discretion, may extend the period of time allowed for the new owner to successfully take and pass the licensure exam.

#### SECTION 12. (Authority of the Commission)

(1) The commission may suspend, revoke, or refuse to issue or renew any licensee hereunder upon finding the holder or applicant has:

(a) Violated any provision of this act, or any rule promulgated hereunder;

(b) Practiced fraud, deceit, or misrepresentation except as authorized by this mandate,

(c) Knowingly and willfully made a material misstatement in connection with an application for license or renewal; or

(d) been convicted by a court of competent jurisdiction of a felony or a misdemeanor, if the commission finds that such conviction reflects unfavorably on the fitness for such licensee.

(e) knowingly make a false or misleading statement to a special master when applying for a writ of assistance (if such a special master system exists within this state)

(2) In addition to or in lieu of any other lawful disciplinary action under this section, the commission may assess a civil penalty not exceeding \_\_\_\_\_dollars (\$ ), forfeiture of license or both.

(3) A license shall not be subject to renewal but may expire during any period in which the license is suspended or is revoked.

#### SECTION (13) (Municipality Fees and Taxes)

(1) 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.

(2) 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 14. (Reciprocity)

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 and under the direct moment by moment supervision of a licensee) of licensee corporations or companies, private investigators and legal investigators who meet or exceed the qualifications established in this act to operate across state lines on mutually acceptable terms.

#### SECTION 15. ( updates and amendments)

The commission 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.

All updates and amendments will be immediatly posted to the commissions web site.

#### SECTION 16.

No individual licensed as an designated licensed professional, licensee company/corporation, private investigator or legal investigator, apprentice or intern in this state shall:

- (a) in order to obtain employment, knowingly make a material misrepresentation as to his/her ability to perform the investigation required by a potential client;
- (b) make unsubstantiated monetary charges to a client for services not rendered or transportation not utilized;
- (c) knowingly make a false report to a client in relation to the effort required or performed and information reported for such client;
- (d) continue an inquiry for a client when it becomes obvious to the designated licensed professional, apprentice or intern that a successful completion of an inquiry is unlikely without first so advising the client and obtaining the client's affirmative approval for continuation of the inquiry ; or
- (e) reveal information obtained for a client during an inquiry to another individual, except as required by law.
- (f) all communication between the designated licensed professional, apprentice or intern to the client or designated legal representative of the client is absolutely privileged and confidential if so indicated in writings and is not subject to discovery notwithstanding any other law to the contrary.

#### SECTION 17.

(1) The provisions of this act shall not apply to:

- (a) 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 under this mandate.
- (b) a governmental officer or employee performing official duties;
- (c) 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:

(d) credit transactions involving the consumer on whom the information is to be furnished and involving the extensions of credit to the consumer;

(e) Information for underwriting of insurance involving any entity.

(f) An attorney at law performing duties relating to the attorney's practice of law. An investigator claiming any exemption under this paragraph 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 mandate not later than 1 year following initial employment with the attorney regardless of the nature, title or assigned responsibilities as proposed at the time of initial employment either on staff or as an independent contractor to the involved attorney or law firm.

(g) insurance Adjusters legally employed who engage 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 insurance 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.

(h) 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 mandate not later than 1 year from the commencement of initial employment, regardless of the initial position or stated responsibilities of employment with the involved business.

(i) The agent of a lienholder solely in the business of repossessing or recovery of collateral items encumbered by liens.

(j) A person engaged in the service of legal process for a court of competent jurisdiction in ( Insert State.)

#### SECTION 18. (Continuing Investigative Education)

Each individual licensee is required to complete forty (40) hours of continuing professional education acceptable to the commission in each calendar year submitting proof thereof at the time of renewal and successfully pass a written and oral exam demonstrating currency of knowledge, competency and skills administered twice yearly by the commission every five (5) years.

The commission shall promulgate such rules as are necessary to carry out this section.

#### SECTION 19. ( Continuing Investigative Education Administrators)

Any person, company or professional association offering designated licensed professionals apprentices, interns private investigators or legal investigators continuing professional educational training for a fee must first be certified by the commission. The commission will have the duty to ensure that the instructors employed by the training company possess both the experience and academic credentials to ensure the curriculum and instruction of the training person, company or professional association will be beneficial to those seeking to continue in or enter into the profession.

The commission shall promulgate such rules as are necessary to carry out this section.

#### SECTION 20. (Violation Status)

Any person violating the provisions of this mandate, or any rule promulgated hereunder, is guilty of a felony and such violation shall be so prosecuted by the State of \_\_\_\_\_ Attorney General upon a showing of sufficient evidentiary proof gathered by the designated representatives of the commission of said violation and formally presented to the State of \_\_\_\_\_ Attorney General.

#### SECTION 21. ( The Commission)

(1) There is hereby created the (Insert State) Private and Legal Investigations Commission, hereinafter referred to as the commission, which consists of nine (9) members, each of whom shall possess good moral character and be a properly licensed designated professional under this mandate at the time of appointment by the Governor of the State of \_\_\_\_\_ with the advice and consent and confirmation of the combined state Assembly and Senate panel,

(2) Seven (7) of the members shall each have been principally engaged as a licensee or legal designated licensed professional 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.

(3) The remaining two (2) members of the commission shall be a person who is not engaged in or conducting the business or acting in the capacity of a designated licensed professional, but will have an experienced legal familiarity consistent with the needs of this commission and be a neutral member of the public.

(4) Initially, the Governor or his designate shall appoint all such members for a term of three (3) years. All such members shall be appointed for terms as provided in the following subsections.

(5) All members of the commission shall be appointed for a term of three (3) years, but may be reappointed as determined as desirable by the governor of this State subject to State Assembly and Senate confirmation. Any vacancy occurring on the commission shall be filled by the Governor for the unexpired term, subject to confirmation by the State Assembly and Senate. No member shall be appointed to succeed himself or herself for more than one (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.

(6) 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 is a member of a racial and gender minority. One (1) person serving on the commission will be from the then existing or retired member of the State of \_\_\_\_\_ judiciary.

#### SECTION 22. (Judicial Body)

The commission is declared to 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 under this mandate.

Should litigation be filed against members of the commission arising from the performance of their duties under this mandate, the members shall be defended by the Attorney General of the State of (\_Insert State). In addition, if there appears to be a conflict of interest, cummis counsel maybe selected by the commissioner for impartial and separate representation at the states expense. A commissioner may retain at his/her own expense additional counsel to represent his/her interest.

#### SECTION 23. ( Comission Responsibilities and Compensation)

(1) 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 mandate 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.

(2) The commission's rules and regulations shall incorporate and establish canons of ethics and minimum acceptable standards of practice for licensees.

(3) The commission, or any committee or sub committee thereof, shall be entitled to the services of the Attorney General in connection with the affairs of the commission.

(4) Each member of the commission shall be compensated at a rate not to exceed what would be available in the private sector for the rendering of such services and the time consumed in the performance of services in behalf of the commission as set by the Governor of the State of \_\_\_\_\_. The funds for said compensation will be derived from licensure fees generated under this mandate, payable monthly along with reimbursement of any authorized out of pocket expense incurred in the performance of the responsibilities of a commission member.

(5) The commission will promulgate internal qualifications to be complied with by any licensee who under this mandate wishes to have access to the unique considerations of the commissions 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 can not be granted such privilege.

(6) Any member of the commission maybe designated as the presiding "Special Master" from time to time as appointed by the Chairperson of the commission. In the absence of the chairman, the co chairperson may so designate a special master from the members of the commission. In the absence of both the chairperson and co chairperson, then the vice chairperson may so appoint the special master from the remaining members of the commission then available. If none of the foregoing are available to make such appointment, then the next commission member of seniority in descending order may make such ad hoc appointment of a "Special Master" pro tem valid until such time as the Chairperson, Co chairperson or Vice Chairperson are available to ratify said appointment or make a different appointment to deliberate on the next succeeding application for a "writ of assistance."

#### SECTION 24. ( Requirement to meet and confer)

(1) 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.

(2) A majority of the commission constitutes a quorum at any meeting of the commission.

(3) 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.

## SECTION 25. (Investigative Privilege and authority)

(1) The commission is authorized to investigate either on the basis of complaints filed with it or, on its own initiative, instances of suspected violations of this mandate.

(2) 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.

## SECTION 26. ( The Special Master)

(1) Any designated licensed professional under this mandate will 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 to the commissions designated "Special Master" by ex parte 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.

(2) This section supersedes and renders moot for the approved inquiry by the Special Master 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 investigative entity for any reason deemed necessary by a designated licensed professional and ratified by the commissions designated Special Master.

(3) 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 commissions 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 commissions designated Special Master forthwith.

(4) Failure of any person or entity to comply forthwith with the "writ of assistance" issued by a Special Master hereunder shall result in fines of not more than \$\_\_\_\_\_ 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.

(5) 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 maybe 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.

(6) 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 cost incurred in the management and implementation of this program and are in addition to any other fees herein mentioned or discussed.

(7) The commission 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.

(8) The criminal and civil immunity is automatically withdrawn if by a subsequent determination of the commission 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 can not 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.

(9) The “Special Master” will be compensated from the fees generated from the application for ex parte hearings from licensees under this mandate.

(10) Upon a showing the located secreted assets inpoundment is not warranted said impounded or frozen funds shall be released forthwith.

(11) A “write of Assistance” will be designed 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 Masters” inprinter or “electronic signature thereof in the instance of an “e-write of assistance.”

#### SECTION 27.

(a) 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 licensee’s under this act and mandate may be enrolled as an applicant for assistance of the “Special Master” hearing.

(B) A licensee may not make application to a Special Master for an ex parte 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 will be promulgated by the commission.

#### SECTION 28.

(a) It is unlawful for any person or entity who is not licensed under this mandate to practice or pretend to be licensed to practice this profession for which a license certifying the qualifications to practice the profession is required and mandated herunder.

(b) A violation of this section is a felony and shall be prosecuted accordingly by the State of \_\_\_\_\_Attorney General.

#### SECTION 29.

Upon successful completion of the requirements for licensure as set forth herein, each new licensee will be sworn to an oath of public interest in a public forum by the Chairperson, Co chairperson or Vice Chairperson of the Commission.

SECTION 30:

All fees collected from this mandate regardless of the source and purpose of those fees are to be placed into a trust fund and used only for the implementation and support of this mandate.

SECTION 31:

A licensee under this mandate will prominently display the licensees then valid licensee number on any business communication in any form for any reason with the exception of those situations sanctioned by a “Special Master” or for pretext and skip trace purposes.

SECTION 32.

This mandate shall take effect and be in force from and after (mmddyy)