

NEW HAMPSHIRE 2010 SESSION LAWS
2010 REGULAR SESSIONAdditions are indicated by **Text**; deletions by
~~Text~~.Ch. 292
H.B. 651

PRIVATE INVESTIGATORS--SECURITY SYSTEMS AND ALARMS--RULES AND REGULATIONS

AN ACT relative to regulation of private investigative agencies and security services.

Be it Enacted by the Senate and House of Representatives in General Court convened:

292:1 Title Change; Detective Agency; Private Investigative Agency. Amend the chapter heading of RSA 106-F to read as follows:

Ch. 106-F pr. 106-F:1

[~~DETECTIVE~~] **PRIVATE INVESTIGATIVE** AGENCIES, **BAIL ENFORCEMENT AGENCIES**, AND SECURITY SERVICES

292:2 Declaration of Purpose. Amend RSA 106-F:1, I to read as follows:

<< NH ST § 106-F:1 >>

I. Provide reasonable supervision [~~and control~~] of private [~~detective~~] **investigative** agencies and their employees, security guard services and their employees, and individuals licensed as private [~~detectives~~] **investigators** and security guards doing business in this state.

292:3 Exclusions. Amend RSA 106-F:2, IV-V to read as follows:

<< NH ST § 106-F:2 >>

IV. Any unarmed security [~~guard~~] **employee** who is [~~an~~] **a direct** employee of a business which is not a security guard agency and who is employed by that business to secure its premises while so employed, **including but not limited to store detective and watchmen**.

V. Towing or wrecking companies engaged in the repossession of vehicles.

VI. Firefighters employed by the state or any political subdivision providing fire watch or fire protection services at public events.**VII. Persons engaged solely in collecting or acquiring data for the purpose of motor vehicle or other accident or**

occurrence reconstruction or scientific analysis.

VIII. Persons engaged in reporting or providing information to an accredited news publication, media, or news outlet.

IX. Persons employed or contracted by a commercial or legal entity to provide, for internal use or dissemination, gross population data or information relating to patterns of general population behavior, criminal or societal activity, or other information that does not include the collection of personally identifiable information, including but not limited to voter preference polls, demographic surveys, or business or academic research.

X. Persons serving subpoenas or summonses for attorneys as provided by statute.

XI. Persons conducting management studies or performance evaluations of municipal, county, or state government agencies or providing recruitment and hiring services for such agencies under contract to governing bodies of those agencies.

XII. Attorneys, and employees of their law firms acting as their agents, exercising legal rights to investigate on behalf of their clients.

XIII. A certified public accountant who holds an active permit issued by any state or a public accounting firm registered in any state, and the employees of such certified public accountant or firm.

XIV. The employees of any nationally or state chartered financial institution, as defined in RSA 161-C:2, VI-b, and any company controlled by, or under common control with, or hired by, the financial institution with respect to the investigation of the identity, identifying information, financial condition, and background of customers, employees, or service providers to comply with, or to audit or evaluate its performance under, the requirements of federal and state laws and regulations.

Provided, however, that nothing in this section shall preclude a person otherwise qualified from licensure under this chapter.

292:4 Prohibition. Amend RSA 106-F:2-a to read as follows:

<< NH ST § 106-F:2-a >>

106-F:2-a Prohibition. No person who is a sworn law enforcement officer employed by the state of New Hampshire [~~or~~], any of its political subdivisions, **any other state or its political subdivisions, or the federal government** shall be issued or hold a private [~~detective's~~] **investigator** license **or agency license**, under this chapter.

292:5 Rulemaking; Enforcement. Amend RSA 106-F:3 to read as follows:

<< NH ST § 106-F:3 >>

106-F:3 Rulemaking; Enforcement.

I. The commissioner of safety shall adopt rules, pursuant to RSA 541-A, relative to **the**:

(a) Form of **original and renewal** licenses and applications therefor;

- (b) Examination procedures for license applications;
- (c) Requisite standards of **applicant and licensee** integrity and reputation for honesty;
- (d) Use of fees for administration and enforcement of this chapter; [~~and~~]
- (e) Revocation of licenses[-] ; **and**

(f) Creation of an advisory board to review complaints and licensing issues.

II. The commissioner of safety shall have the authority to enforce the provisions of this chapter, which authority shall not be restricted by RSA 106-B:15.

292:6 New Section; Advisory Board. Amend RSA 106-F by inserting after section 3 the following new section:

<< NH ST § 106-F:3-a >>

106-F:3-a Advisory Board.

I. There is hereby established an advisory board to review complaints and licensing issues relative to private investigative agencies and security services. Each member shall be appointed by the governor and approved by the council. A member shall continue to serve until a successor is appointed by the governor and council. Members of the board shall serve without compensation. Members shall each serve a term of 3 years. No appointed member shall be eligible to serve more than 3 full consecutive terms, provided that for this purpose only a period actually served which exceeds 1/2 of the 3-year term shall be deemed a full term. Initial appointments made by the governor shall be staggered for terms of one, 2, or 3 years.

II. The board shall consist of:

(a) Three members licensed in New Hampshire as investigators and who have been so licensed for the last 5 years, one of whom shall be engaged in the practice of accident reconstruction or the practice of bail recovery.

(b) Two members of the general public who are not and have never been licensed in New Hampshire or another jurisdiction as investigators and who are not the spouse of any such person and who do not have and never have had a material interest in either provision of private investigation services or an activity directly related to private investigation, including representation of the board or profession for a fee at any time during the 5 years preceding their appointments.

(c) One member of the law enforcement community.

(d) The commissioner of the department of safety, or designee.

III. The board shall elect a chairperson from its members. The board shall hold its first meeting no later than 90 days after the effective date of this section.

292:7 Definitions. RSA 106-F:4 is repealed and reenacted to read as follows:

<< NH ST § 106-F:4 >>

106-F:4 Definitions. In this chapter:

- I. "Applicant" means any person who makes application to engage in any activity regulated under this chapter.
- II. "Armed" security guard or private investigator means a person or entity who offers to perform or performs, in association with the services provided, physical protection to persons or property through the use of firearms. Nothing in this chapter shall prohibit a licensee holding a valid license to carry a pistol or revolver pursuant to RSA 159:6 from possessing or carrying a firearm for his or her personal protection as otherwise provided by law, except as subject to the provisions of RSA 106-F:8-a.
- III. "Bail enforcement agent" means any person engaging for pay or reward in the business of the location or recovery of escaped persons who have defaulted on bail bond.
- IV. "Commissioner" means the commissioner of the department of safety.
- V. "Doing business" means advertising in New Hampshire or soliciting work, clients, or customers in or from New Hampshire.
- VI. "Employee" means an individual employed by a private investigative agency or an individual employed by a security guard service or bail recovery service performing the duties of a private investigator or a security guard for the said private investigative agency, bail recovery service, or security guard service.
- VII. "Full-time" means engaged in the business of security or private detective as the primary occupation.
- VIII. "Individual" means an individual licensed as a private investigator or security guard who is not an employee and who has no employees.
- IX. "Licensee" means a licensed private investigative agency or security guard service.
- X. "License holder" means an employee of a licensee.
- XI. "Private investigator" means a person not excluded by RSA 106-F:2 engaged in conducting investigations, including but not limited to:
 - (a) Unsolved crimes.
 - (b) Insurance claims or matters for attorneys in anticipation of civil litigation.
 - (c) Clandestine surveillance.
 - (d) Locating missing persons.
 - (e) Locating lost, concealed, or stolen property.
 - (f) Locating escaped felons or wanted persons subject to reward for capture.

XII. "Private investigative agency" means the business, within or from the state of New Hampshire, of offering or providing by legal means, for a fee or other compensation, to other persons or businesses, the service of collecting information on the identity, character and characteristics, reputation, conduct, background history, movements, whereabouts, affiliations, or transactions of any other living person or any business or legal entity or organization, for a fee, hire, or reward information on the identity, conduct, movements, whereabouts, affiliations, transactions, reputation, or character of any person, or otherwise making inquiries or collecting evidence, for a private rather than a public interest. This shall not preclude a licensee under this chapter from pursuing investigation of matters arising in this state in, another state, or political subdivision except as provided by the law of the other state or political subdivision.

XIII. "Security guard" means any person contracted to any entity for the purpose of providing protection of individuals or their property or assets from injury or theft and includes but is not limited to crowd control, fire watch, access control, the safe transport of money or valuable documents, personal protection, or body guard services, but shall not require the licensing of persons from other states temporarily accompanying national political candidates on visits to the state or persons providing temporary security to entertainers at live performances.

XIV. "Security guard service" means any business entity, except as provided in RSA 106-F:2, that furnishes or employs security guards or other persons for the protection of individuals or their property from injury or theft and includes, but is not limited to, services providing for the safe transport of money or valuable documents and security patrols of homes, businesses, or industrial plants. Such service may use the terms "security," "safety," "control" or like terms leading the public to look to the individual as a person of authority. A person engaged in so-called "executive protection" or providing body guard services shall be classified as a security guard.

292:8 License Required; Registration of Foreign Corporations. Amend RSA 106-F:5, I-II to read as follows:

<< NH ST § 106-F:5 >>

I. No person shall engage in the business of a private [~~detective~~ **investigative** agency, **security guard agency, or bail enforcement agency** without obtaining a private [~~detective~~ **investigative, security guard, or bail enforcement** agency license from the commissioner of safety and no person shall engage in the business of a security guard service **or bail enforcement service** without obtaining a security guard service **or bail enforcement service** license from the commissioner of safety.

II. No person shall become an employee of a private [~~detective~~ **investigative** agency [~~or~~], a security guard agency, **or a bail enforcement agency** without first obtaining a license to do so from the commissioner of safety.

292:9 Application for License; Confidentiality. Amend RSA 106-F:6 to read as follows:

<< NH ST § 106-F:6 >>

106-F:6 Application for License; Confidentiality. All information provided by an applicant for [a] **an original or renewal** license under this chapter, other than the application date and the [~~business~~ **mailing** address of the applicant, shall be kept confidential, unless such information is requested by a law enforcement agent engaged in the performance of his **or her** authorized duties. An applicant for any license issued under this chapter shall include the following in his **or her** application:

I. The name and address of the firm applying for a license, or the name and address **and date and place of birth** of the applicant if an individual, and all partners, officers, and major stockholders.

II. The name, **residence, mailing address, and date and place of birth** of the person primarily responsible for man-

aging and conducting the business in this state.

III. ~~[The name]~~ **For an original license, the names** of at least 3 unrelated persons to whom inquiry can be made concerning the applicant's character as to integrity and reputation for honesty.

IV. **For an original or renewal license**, the applicant's record of felony convictions and misdemeanor convictions **in this or any other state or nation that have not been pardoned or annulled, information as to whether any prior or similar licenses were ever revoked or suspended in this or any other state, Canadian province, or nation, and disclosure of any claim or lawsuit regarding conduct as a licensee, or any domestic violence protective order.**

V. ~~[Information as to whether any prior or similar licenses have ever been issued to the applicant and if so, whether such licenses were ever revoked or suspended, in this or any other state.~~

~~VI.]~~In the case of an applicant for an armed security guard or armed private ~~[detective]~~ **investigator or bail enforcement agent** license, 2 sets of the applicant's fingerprints taken at state police headquarters.

~~[VII.]~~ **VI.** Two photographs of the applicant taken at state police headquarters to be used for a photo license card issued by the commissioner of safety identifying the private ~~[detective]~~ **investigator, bail enforcement agent,** or security guard ~~[holder]~~ and by whom he **or she** is employed.

~~[VIII.]~~ **VII.** In addition to the requirements of paragraphs ~~[I-VII]~~ **I-VI**, applicants for private ~~[detective]~~ **investigator or bail enforcement agent** licenses shall meet the following qualifications:

(a) Be a resident of the United States.

(b) Be at least 18 years of age.

(c) Have no record of ~~[violent misdemeanors, or theft, fraud, or felony convictions]~~ **felony convictions of any type or conviction of a misdemeanor associated with theft, honesty, fraud, use or sale of controlled substances, misdemeanor crimes of violence that in the judgment of the commissioner of safety would cast doubt on the applicant's future good behavior, domestic violence, or abuse of any type, or an active domestic violence protective order in New Hampshire or any other jurisdiction in the United States, its possessions, or territories.**

(d) Except for employees, possess:

(1) A minimum of 4 years' experience as a full-time law enforcement officer with a federal, state, county, **college or university,** or municipal police department, **director of security or senior officer of a company or corporation, or licensed security service, full-time adjuster, risk manager, or claims investigator for an insurance carrier or adjusting company;** or

(2) An associate of science degree or bachelor of science degree in criminal justice or fire service from an accredited college or university, **certification from the American Society for Industrial Security as a certified professional investigator, or certification from the National Association of Legal Investigators as a certified legal investigator** and employment as a full-time investigator for a private ~~[detective]~~ **investigative** agency for at least 2 years; or

(3) A minimum of 4 years' employment as a full-time investigator for a licensed private ~~[detective]~~ **investigator** or private ~~[detective]~~ **investigative** agency; or

(4) A minimum of 4 years' experience as a full-time firefighter and certification by the International Association of Arson Investigators[-] ; **or**

(5) Certification by the American Society for Industrial Security in security operations, and 2 years experience providing such services; or

(6) Certification by the American Society for Industrial Security in executive protection, and 2 years experience providing such services.

(e) Provide verifiable documentation of his **or her** qualifications at the time of application for a license.

292:10 Issuance of License; Identification Card. Amend RSA 106-F:7, I to read as follows:

<< NH ST § 106-F:7 >>

I. Following review of the application[7] **and** the applicant's references, and investigation into the character, competency, and integrity of the applicant, the commissioner shall as soon as practicable issue a license or renewal license in the form prescribed by [him] **the commissioner** to the applicant, or notify the applicant of denial of the application. **Notification of licensure or the denial of a license shall be forwarded to local law enforcement in the community in which the licensee resides.** Prior to approval of any armed [detective] **private investigator, bail enforcement,** or security license issued under this chapter, the applicant shall submit to a fingerprint examination conducted by the Federal Bureau of Investigation, and the department of safety shall be authorized to use the records of the Federal Bureau of Investigation in the screening of applicants. The applicant shall be responsible for the cost of any background investigation or criminal records check required under this section.

292:11 License Application and Renewal Fees. Amend RSA 106-F:8 to read as follows:

<< NH ST § 106-F:8 >>

106-F:8 License Application and Renewal Fees.

I. The fee for a private [detective] **investigative** agency license or a security guard service license shall be [\$100] **\$150** for an agency or service employing one person licensed under this chapter and [\$400] **\$500** for an agency or service employing more than one such person. A person may hold one or more types of license at any given time, provided that a separate fee shall be paid for each license so held. Licenses shall be valid for 2 years after the date of issue and shall be renewed every 2 years thereafter, upon application and payment of the fee and submission of certified evidence that the surety bond remains in force. The application for renewal shall be submitted at least 15 days before the expiration of the previously granted license.

II. [~~There shall be a nonrefundable fee of \$5 for a license issued by the commissioner of safety to an employee as defined in RSA 106-F:4, IV.~~] **The commissioner of safety shall set a reasonable fee, not exceeding \$50, which the commissioner shall adopt by rule under RSA 541-A, to cover the expenses of licensing individuals under this chapter.** Such fee shall be paid by the service or agency employing such employee and shall be paid before the license is issued. Such licenses shall be valid for 2 years after the date of issue and shall be renewed upon the completion and filing of an application for renewal which meets the requirements of this chapter submitted at least 15 days before the expiration of the previously granted license.

III. The commissioner of safety shall set a reasonable fee, which he **or she** shall adopt by rule under RSA 541-A, to cover the expenses of the record check and investigation provided in RSA 106-F:7. The fee shall be charged to the

applicant.

292:12 Firearm Proficiency. Amend RSA 106-F:8-a to read as follows:

<< NH ST § 106-F:8-a >>

106-F:8-a Firearm Proficiency.

I. All armed security guards [~~and~~] armed private [~~detectives~~] **investigators, and armed bail enforcement agents** shall meet minimum requirements in the proficiency in the use of firearms at least once per year. The requirements shall be as follows:

(a) The practical police course or the tactical revolver course, with a minimum qualification score of 75 percent.

(b) Shotgun familiarization course required for all security officers **and bail enforcement agents** whose employers issue, or have as part of their equipment, shotguns.

(c) Four hours of instruction, to include firearms techniques and safety, laws on the use of deadly force, and the moral and ethical use of force. Only qualified firearms instructors shall be used to certify the successful completion of the requirements.

II. Individuals shall be considered for qualification if they successfully complete one of the following courses:

(a) **Police standards and training** council firearms instructor school;

(b) F.B.I. firearms instructor school;

(c) Smith & Wesson **or SIG Sauer** firearms instructor school;

(d) National Rifle Association police firearms instructor course;

(e) Equivalent courses as determined by the commissioner of safety on an individual basis.

292:13 Employees. Amend RSA 106-F:11, I to read as follows:

<< NH ST § 106-F:11 >>

I. A person licensed under this chapter may employ agents or guards as [~~he~~] **such licensee** deems necessary. The licensee shall be responsible for the conduct of any such employees who shall be covered under the licensee's surety bond.

292:14 New Paragraph; Notice of Change. Amend RSA 106-F:12 by inserting after paragraph II the following new paragraph:

<< NH ST § 106-F:12 >>

III. Any license holder who is arrested and charged with any felony or misdemeanor or becomes subject to a domestic violence protective order shall notify the commissioner of safety of the charge and the circumstances within one

business day of the issuance of the order or the arrest.

292:15 Restrictions. Amend RSA 106-F:13 to read as follows:

<< NH ST § 106-F:13 >>

106-F:13 Restrictions ; **Penalty.**

I. No trade name or designation shall be used which implies any association with any municipal, county, state, or federal government or agency thereof. No licensee shall use a badge of any kind for identification purposes, except a security guard, who, if he **or she** wears any type of badge, shall wear one badge on the left breast of his **or her** uniform and one on his **or her** cap while on duty as a security guard. The word "police" shall not be used in any way, on any seal, card, badge, or advertisement by the licensee.

II. No person shall:

- (a) Provide any service requiring licensure under this chapter who is not licensed under this chapter.
- (b) Falsely represent that a person holds a valid license issued under this chapter.
- (c) Possess a license or identification card issued to another person under this chapter.

(d) Engage in advertising or the use of any seal or card which, in the opinion of the commissioner, may tend to mislead the public.

III. Violation of this section shall be a misdemeanor if a natural person and a felony if any other person.

292:16 Obligation to Report Certain Criminal Violations. Amend RSA 106-F:13-a to read as follows:

<< NH ST § 106-F:13-a >>

106-F:13-a Obligation to Report Certain Criminal Violations.

I. All felonies observed or ~~[discovered by]~~ **revealed by or to** persons licensed under this chapter shall be immediately reported to the New Hampshire state police ~~[or to the local police department in the municipality in which the felony occurred]~~, **the closest law enforcement agency having jurisdiction, or the attorney general's office.**

II. A licensee who reports criminal activity to state or local police or a county sheriff shall be immune from civil liability for making a report or information available to law enforcement provided it is made in good faith and with reasonable belief in its veracity and is in compliance with this chapter.

III. A licensee who is employed or contracted and supervised by an attorney shall not be required to report any of his or her work product which would violate the privilege of confidentiality between the attorney and his or her client.

292:17 New Section; Other Provisions. Amend RSA 106-F by inserting after section 13-a the following new section:

<< NH ST § 106-F:13-b >>

106-F:13-b Other Provisions.

I. Except as permitted under RSA 173-B:5-a and RSA 633:3-a, III-d, no licensee or license holder shall engage in activity or stand in the stead or as agent or representative of a person or legal entity that is judicially or statutorily prohibited from making inquiry or having contact, or otherwise legally barred from the activity requested of or performed by the licensee or license holder. A representation made by the engaging person or legal entity, taken in good faith, that no such prohibition exists shall be an affirmative defense regarding a violation of this section. A licensee who becomes aware of a prohibition shall immediately desist from further prohibited activity; shall not provide information gained through the prohibited activity to another person; and, if such information has been provided, shall have a duty to notify any aggrieved person.

II. No person licensed under this chapter shall be required to reveal other than by judicial order information on the subject, nature, or substance of an investigation or work product to any other person if by doing this he or she would violate the rights and interests of a person engaging the services of the licensee, except to the limited extent that may be needed to dispel the suspicions of a law enforcement officer investigating a report of loitering, prowling, or other suspicious activity pursuant to RSA 644:6, and except to the commissioner of safety or authorized agent when required in an investigation of improper or illegal conduct by the licensee.

292:18 Suspension or Revocation; Cessation of Operation. Amend RSA 106-F:14 to read as follows:

<< NH ST § 106-F:14 >>

106-F:14 Suspension or Revocation; Cessation of Operation.

I. The commissioner of safety may revoke or suspend a license issued under this chapter, after a hearing, if the licensee:

(a) Violates any provision of this chapter or any rules adopted under this chapter.

(b) Is convicted of fraud, deceit, ***or a felony of any type, or a misdemeanor associated with theft, dishonesty, physical assault, violation of a protective order, abuse of any type, or use of or sale of illegal drugs in New Hampshire or any other jurisdiction in the United States, its possessions, or territories.***

(c) Suffers from any diagnosable mental illness to an extent that would cast doubt on the licensee's ability to carry out his or her essential job functions in a manner not dangerous to himself or herself or the public, or to faithfully comply with the provisions of this chapter.

[(e)] ***(d)*** Makes a material misstatement in a license application or application for license renewal.

II. Unless a license revocation or suspension issued under this section is appealed, the licensee shall immediately cease operations for the time period ordered in the suspension notice, or permanently if his license has been revoked. The licensee shall immediately notify all its clients of such revocation or suspension. The licensee shall forward a copy of each such notification to the commissioner, and keep a copy of each such notification in its business records.

III. Any license suspended or revoked under this section shall be surrendered to the commissioner within 72 hours of receipt of the notice of suspension or revocation by the licensee, subject to the provisions of RSA 106-F:15.

292:19 Penalty. Amend RSA 106-F:16 to read as follows:

<< NH ST § 106-F:16 >>

106-F:16 Penalty. Any [~~individual or~~] person who engages in business as a private [~~detective~~] **investigative** agency, **bail enforcement agency**, or security guard service without first having obtained a license therefor or who violates any other provisions of this chapter shall be guilty of a misdemeanor **for a natural person and a felony for any other person**.

292:20 Effective Date. This act shall take effect January 1, 2011.

(Approved: July 13, 2010)

(Effective Date: January 1, 2011)

NH LEGIS 292 (2010)

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