

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 584*
Judiciary II Committee Substitute Adopted 4/20/09
PROPOSED COMMITTEE SUBSTITUTE S584-PCS55410-TD-44

Short Title: Amend Private Protective Services Act.

(Public)

Sponsors:

Referred to:

March 12, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE PRIVATE PROTECTIVE SERVICES ACT.

3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** G.S. 74C-3(b) is amended by adding a new subdivision to read:

5 "(b) "Private protective services" shall not include any of the following:

6 ...

7 (17) A person engaged in (i) computer or digital forensic services or in the
8 acquisition, review, or analysis of digital or computer-based information,
9 whether for the purposes of obtaining or furnishing information for
10 evidentiary or other purposes, or for providing expert testimony before a
11 court; or (ii) network or system vulnerability testing, including network
12 scans and risk assessment and analysis of computers connected to a network.

13"

14 **SECTION 2.** G.S. 74C-7 reads as rewritten:

15 "**§ 74C-7. Investigative powers of the Attorney General.**

16 The Attorney General for the State of North Carolina shall have the power to investigate or
17 cause to be investigated any complaints, allegations, or suspicions of wrongdoing or violations
18 of this Chapter involving individuals licensed, or to be licensed, under this Chapter. Any
19 investigation conducted pursuant to this section is deemed confidential and is not subject to
20 review under G.S. 132-1 until the investigation is complete and a report is presented to the
21 Board. However, the report may be released to the licensee after the investigation is complete
22 but before the report is presented to the Board."

23 **SECTION 3.** G.S. 74C-8(c) reads as rewritten:

24 "(c) (1) A business entity other than a sole proprietorship shall not do business under
25 this Chapter unless the business entity has in its employ a designated
26 resident qualifying agent who meets the requirements for a license issued
27 under this Chapter and who is, in fact, licensed under the provisions of this
28 Chapter, unless otherwise approved by the Board. Provided however, that
29 this approval shall not be given unless the business entity has and
30 continuously maintains in this State a registered agent who shall be an
31 individual resident in this State. Service upon the registered agent appointed
32 by the business entity of any process, notice, or demand required by or
33 permitted to be served upon the business entity by the Private Protective



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1 Services Board shall be binding upon the business entity and the licensee.
2 Nothing herein contained shall limit or affect the right to serve any process,
3 notice, or demand required or permitted by law to be served upon a business
4 entity in any other manner now or hereafter permitted by law.

5 (2) For the purposes of the Chapter a qualifying agent means an individual in a
6 management position who is licensed under this Chapter and whose name
7 and address have been registered with the Director.

8 (3) In the event that the qualifying agent upon whom the business entity relies in
9 order to do business ceases to perform his duties as qualifying agent, the
10 business entity shall notify the Director within 10 working days. The
11 business entity must obtain a substitute qualifying agent within 30 days after
12 the original qualifying agent ceases to serve as qualifying agent unless for
13 good cause: (i) the Board, in its discretion, ~~extends this period, for good~~
14 ~~cause, for a~~ extends the period of time not to exceed three months; or
15 (ii) following petition by an applicant and a hearing by the Board, the Board
16 extends the period of time not to exceed six months.

17 (4) The certificate authorizing the business entity to engage in a private
18 protective services profession shall list the name of at least one designated
19 qualifying agent. No licensee shall serve as the qualifying agent for more
20 than one business entity without prior approval of the Director, subject to the
21 approval of the Board.

22 (5) The Department of Justice may provide a criminal record check to the
23 Private Protective Services Board for a person who has applied for a new or
24 renewal license, registration, certification, or permit through the Private
25 Protective Services Board. The Board shall provide to the Department of
26 Justice, along with the request, the fingerprints of ~~the applicant, a new~~
27 applicant, and the Department of Justice shall provide a criminal record
28 check based upon the applicant's fingerprints. The Board may request a
29 criminal record check from the Department of Justice for a renewal applicant
30 based upon the applicant's fingerprints in accordance with policy adopted by
31 the Board. The Board shall provide any additional information required by
32 the Department of Justice, and a form signed by the applicant consenting to
33 the check of the criminal record and to the use of the fingerprints and other
34 identifying information required by the State or national repositories. The
35 applicant's fingerprints shall be forwarded to the State Bureau of
36 Investigation for a search of the State's criminal history record file, and the
37 State Bureau of Investigation shall forward a set of the fingerprints to the
38 Federal Bureau of Investigation for a national criminal history check. The
39 Board shall keep all information pursuant to this subdivision privileged, in
40 accordance with applicable State law and federal guidelines, and the
41 information shall be confidential and shall not be a public record under
42 Chapter 132 of the General Statutes.

43 The Department of Justice may charge each applicant a fee for
44 conducting the checks of criminal history records authorized by this
45 subdivision."

46 **SECTION 4.** G.S. 74C-8(f) reads as rewritten:

47 "(f) Upon a finding that the application is in proper form, the completion of the
48 background investigation, and the completion of an examination required by the Board, the
49 Director shall submit to the Board the application and ~~his~~ the Director's recommendations.
50 Upon completion of the background investigation, the Director may ~~in his discretion~~ issue a
51 temporary license pending approval of the application by the Board at the next regularly

1 scheduled meeting. The Board shall determine whether to approve or deny the application for a
2 license. Upon approval by the Board, a license will be issued to the applicant upon payment by
3 the applicant of the initial license fee and the required contribution to the Private Protective
4 Services ~~Recovery-Education~~ Fund, and certificate of liability insurance."

5 **SECTION 5.** G.S. 74C-9(d) reads as rewritten:

6 "(d) The operator or manager of any branch office shall be properly licensed or
7 registered. The license shall be posted at all times in a conspicuous place in the branch office.
8 This license shall be issued for a term of ~~one year~~two years. Every business covered under the
9 provisions of this Chapter shall file in writing with the Board the addresses of each of its
10 branch offices, if any, within 10 working days after the establishment, closing, or changing of
11 the location of any branch office. The Director may, upon the successful completion of an
12 investigation of the application, issue a temporary branch office license pending approval of the
13 application by the Board."

14 **SECTION 6.** G.S. 74C-9(e) reads as rewritten:

15 "(e) The Board is authorized to charge reasonable application and license fees as
16 follows:

- 17 (1) A nonrefundable initial application fee in an amount not to exceed one
18 hundred fifty dollars ~~(\$150.00);~~(\$150.00).
- 19 (2) A new or renewal license fee in an amount not to exceed two hundred fifty
20 dollars (\$250.00) per year of the license ~~term;~~term.
- 21 (3) A new or renewal trainee permit fee in an amount not to exceed two hundred
22 fifty dollars (\$250.00) per year of the license ~~term;~~term.
- 23 (4) A new or renewal fee for each license or duplicate license in addition to the
24 basic license referred to in subsection (2) in an amount not to exceed fifty
25 dollars ~~(\$50.00);~~(\$50.00) per year of the license term.
- 26 (5) A late renewal fee to be paid within 90 days from the date the license,
27 registration, permit, or certification expires in addition to the renewal fee due
28 in an amount not to exceed one hundred dollars (\$100.00), if the ~~license~~
29 license, registration, permit, or certification has not been renewed on or
30 before the expiration date of the ~~license;~~license, registration, permit, or
31 certification.
- 32 (6) A new, renewal, replacement or reissuance fee for an unarmed registration
33 identification card in an amount not to exceed thirty dollars
34 ~~(\$30.00);~~(\$30.00).
- 35 (7) An application fee for a firearm registration permit not to exceed fifty dollars
36 ~~(\$50.00);~~(\$50.00).
- 37 (8) A new, renewal, replacement, or reissuance fee for a firearm registration
38 permit not to exceed thirty dollars ~~(\$30.00);~~(\$30.00).
- 39 (9) An application fee for certification as a certified trainer not to exceed fifty
40 dollars ~~(\$50.00);~~(\$50.00).
- 41 (10) A renewal or replacement fee for certified trainer certification not to exceed
42 twenty-five dollars ~~(\$25.00);~~(\$25.00).
- 43 (11) A new nonresident temporary permit fee not to exceed one hundred dollars
44 ~~(\$100.00);~~(\$100.00).
- 45 (12) An unarmed registration transfer fee not to exceed fifteen dollars
46 ~~(\$15.00);~~(\$15.00).
- 47 (13) A branch office license fee not to exceed fifty dollars ~~(\$50.00); and~~(\$50.00)
48 per year of the license term.
- 49 (14) A special limited guard and patrol license fee not to exceed one hundred
50 dollars ~~(\$100.00);~~(\$100.00) per year of the license term.

1 (15) A correctable error fee not to exceed one hundred dollars (\$100.00) for each
2 subsequent filing of an application following review and rejection of the
3 initial application.

4 Except as provided in G.S. 74C-13(k), all fees collected pursuant to this section shall be
5 expended, under the direction of the Board, for the purpose of defraying the expenses of
6 administering this Chapter."

7 **SECTION 7.** G.S. 74C-11(a) reads as rewritten:

8 "(a) All licensees may employ unarmed security guards as probationary employees for
9 20 consecutive calendar days. Upon completion of the probationary period and the desire of the
10 licensee to hire an unarmed security guard as a regular employee, the licensee shall register the
11 employee who will be engaged in providing private protective services covered by this Chapter
12 with the Board within 30 days after the probationary employment period ends, unless the
13 Director, in the Director's discretion, extends the time period, for good cause. Before a
14 probationary employee engages in private protective services, the employee shall complete any
15 training requirements, and the licensee shall conduct a criminal record check on the employee,
16 as the Board deems appropriate. The licensee shall submit a list of the probationary employees
17 to the Director on a monthly basis. The list shall include the name, address, social security
18 number, and dates of employment of the employees.

19 To register an employee after the probationary period ends, a licensee must give the Board
20 the following:

- 21 (1) Set(s) of classifiable fingerprints on standard F.B.I. applicant cards; recent
22 photograph(s) of acceptable quality for identification; and
- 23 (2) Statements of any criminal records obtained from the appropriate authority
24 in each area where the employee has resided within the immediately
25 preceding 48 months."

26 **SECTION 8.** G.S. 74C-12(a) reads as rewritten:

27 "(a) The Board may, after compliance with Chapter 150B of the General Statutes, deny,
28 suspend or revoke a license, registration, or permit issued under this Chapter if it is determined
29 that the applicant, licensee, registrant, or permit holder has done any of the following acts:

- 30 (1) Made any false statement or given any false information in connection with
31 any application for a license, registration, or permit or for the renewal or
32 reinstatement of a license, registration, or permit.
- 33 (2) Violated any provision of this Chapter.
- 34 (3) Violated any rule adopted by the Board pursuant to the authority contained
35 in this Chapter.
- 36 (4) Repealed by Session Laws 1989, c. 759, s. 10.
- 37 (5) Impersonated or permitted or aided and abetted any other person to
38 impersonate a law enforcement officer of the United States, this State, any
39 other state, or any political subdivision of a state.
- 40 (6) Engaged in or permitted any employee to engage in a private protective
41 services profession when not lawfully in possession of a valid license issued
42 under the provisions of this Chapter.
- 43 (7) Willfully failed or refused to render to a client service as agreed between the
44 parties and for which compensation has been paid or tendered in accordance
45 with the agreement of the parties.
- 46 (8) Knowingly made any false report to the employer or client for whom
47 information is being obtained.
- 48 (9) Committed an unlawful breaking or entering, assault, battery, or kidnapping.
- 49 (10) Knowingly violated or advised, encouraged, or assisted the violation of any
50 court order or injunction in the course of business as a licensee.
- 51 (11) Repealed by Session Laws 1989, c. 759, s. 10.

- 1 (12) Undertaken to give legal advice or counsel or to in any way falsely represent
2 that he or she is representing any attorney or he or she is appearing or will
3 appear as an attorney in any legal proceeding.
- 4 (13) Issued, delivered, or uttered any simulation of process of any nature which
5 might lead a person ~~or persons~~ to believe that such simulation – written,
6 printed, or typed – may be a summons, warrant, writ or court process, or any
7 pleading in any court proceeding.
- 8 (14) Failed to make the required contribution to the Private Protective Services
9 ~~Recovery-Education~~ Fund or failed to maintain the certificate of liability
10 insurance required by this Chapter.
- 11 (15) Violated the firearm provisions set forth in this Chapter.
- 12 (16) Repealed by Session Laws 1989, c. 759, s. 10.
- 13 (17) Failed to notify the Director by a business entity other than a sole
14 proprietorship licensed pursuant to this Chapter of the cessation of
15 employment of the business entity's qualifying agent within the time set
16 forth in this Chapter.
- 17 (18) Failed to obtain a substitute qualifying agent by a business entity within 30
18 days after its qualifying agent has ceased to serve as the business entity's
19 qualifying agent.
- 20 (19) Been judged incompetent by a court having jurisdiction under Chapter 35A
21 or former Chapter 35 of the General Statutes or committed to a mental health
22 facility for treatment of mental illness, as defined in G.S. 122C-3, by a court
23 under G.S. 122C-271.
- 24 (20) Failed or refused to offer a report to a client within 30 days of the client's
25 written request after the client has paid for services rendered.
- 26 (21) Been previously denied a license, registration, or permit under this Chapter
27 or previously had a license, registration, or permit revoked for cause. The
28 denial or revocation shall include a principal in the applicant's business.
- 29 (22) Engaged in a private protective services profession under a name other than
30 the name under which the license was obtained under the provisions of this
31 Chapter.
- 32 (23) Divulged to any person, except as required by law, any information acquired
33 by the license holder except at the direction of the employer or client for
34 whom the information was obtained. A licensee may divulge to any law
35 enforcement officer or district attorney or district attorney's representative
36 any information the law enforcement officer may require to investigate a
37 criminal offense with the prior approval and consent of the client.
- 38 (24) Fraudulently held himself or herself out as employed by or licensed by the
39 State Bureau of Investigation or any other governmental authority.
- 40 (25) ~~Intemperate~~ Demonstrated intemperate habits or lacks a lack of good moral
41 character. The acts that are prima facie evidence of intemperate habits or
42 lack of good moral character under G.S. 74C-8(d)(2) are prima facie
43 evidence of the same under this subdivision.
- 44 (26) Advertised or solicited business using a name other than that in which the
45 license was issued.
- 46 (27) Worn, carried, or accepted any badge or shield purporting to indicate that the
47 person is a law enforcement officer while licensed under the provisions of
48 this Chapter as a private investigator.
- 49 (28) Possessed or displayed a badge or shield while providing private protective
50 services that was not designed and approved by the Board pursuant to
51 G.S. 74C-5(12).

1 (29) Failed or refused to reasonably cooperate with the Board or its agents during
2 an investigation of any complaint, allegation, suspicion of wrongdoing, or
3 violation of this Chapter.

4 (30) Failed to properly make any disclosure to the Board or provide documents or
5 information required by this Chapter or rules adopted by the Board.

6 (31) Engaged in conduct constituting dereliction of duty or otherwise deceived,
7 defrauded, or harmed the public in the course of professional activities or
8 services.

9 (32) Demonstrated a lack of financial responsibility."

10 **SECTION 9.** G.S. 74C-12(c) reads as rewritten:

11 "(c) The following persons may not be issued a ~~license, registration, or permit~~ license
12 under this Chapter:

13 (1) A sworn court official.

14 (2) A holder of a company police commission under Chapter 74E of the General
15 Statutes."

16 **SECTION 10.** G.S. 74C-13(a) reads as rewritten:

17 "(a) It shall be unlawful for any person performing private protective services duties to
18 carry a firearm in the performance of those duties without first having met the qualifications of
19 this section and having been issued a firearm registration permit by the Board. A licensee shall
20 register any individual carrying a firearm within 30 days of employment. Before engaging in
21 any private protective services activity, the individual shall receive any required training
22 prescribed by the Board."

23 **SECTION 11.** G.S. 74C-14 is repealed.

24 **SECTION 12.** Chapter 74C of the General Statutes is amended by adding a new
25 section to read:

26 "**§ 74C-23. Acquisition or change of ownership or control of licensed firm, association, or**
27 **corporation.**

28 In the event a company, firm, or corporation licensed under this Chapter transfers
29 ownership, control, or a majority of assets to another person, firm, association, or corporation,
30 the person, firm, association, or corporation acquiring control or ownership shall have the
31 following responsibilities:

32 (1) Notify the Director of the acquisition or change of ownership or control by
33 registered mail within five business days from the date of the transaction.

34 (2) Describe the transaction that has occurred by providing the following
35 information:

36 a. The name and address of the registered agent of the party acquiring
37 control or ownership or otherwise succeeding the licensee.

38 b. The name and address of the acquiring party, including each
39 individual owner of any interest in the party or, if the party is a
40 corporation, the name and address of each officer of the corporation
41 and member of the board of directors.

42 c. Any change in location of any branch office.

43 d. Any change in insurance or bonding limits.

44 (3) Return to the Director all licenses held by the licensee within five business
45 days from the date of the transaction if the acquiring party does not continue
46 to operate the business under its previous name and license.

47 (4) Provide to the Director within 60 calendar days from the date of the
48 transaction the following:

49 a. A list of all registrants or licensees affected by the transaction.

50 b. Written confirmation of completion of any changes necessary for the
51 acquiring party to comply with the requirements of this Chapter or

1 any applicable rules adopted by the Board on a form approved by the
2 Director."

3 **SECTION 13.** The title of Article 2 of Chapter 74C of the General Statutes and
4 G.S. 74C-30 read as rewritten:

5 "Article 2.

6 "Private Protective Services ~~Recovery~~ Education Fund.

7 **"§ 74C-30. Private Protective Services ~~Recovery~~ Education Fund created; payments to**
8 **Fund; management; use of funds.**

9 (a) There is hereby created and established a special fund to be known as the "Private
10 Protective Services ~~Recovery~~ Education Fund" (hereinafter Fund) which shall be set aside and
11 maintained in the Office of the State Treasurer. ~~Said~~ The Fund shall be used in the manner
12 provided in this Article for the ~~payment of claims where the aggrieved person has suffered a~~
13 ~~direct monetary loss by reason of certain acts committed by any person licensed under this~~
14 ~~Chapter.~~ education of licensees and registrants as deemed appropriate by the Board.

15 (b) ~~Nothing contained in this Article shall limit the authority of the Board to take~~
16 ~~disciplinary action against any licensee or trainee under this Chapter, nor shall the repayment in~~
17 ~~full or all obligations to the Fund by any licensee or trainee nullify or modify the effect of any~~
18 ~~other disciplinary proceeding brought under this Chapter.~~

19 (c) In addition to the fees provided for elsewhere in this Chapter, the Board shall charge
20 the following fees which shall be deposited into the Fund:

21 (1) Repealed by Session Laws 2007-511, s. 10.

22 (2) The Board shall charge each new applicant for a licensee or trainee permit
23 fifty dollars (\$50.00), provided that for purposes of this Article a new
24 applicant is hereby defined as an applicant who did not possess a license or
25 trainee permit on July 1, 1983; and

26 (3) The Board is authorized to charge each licensee and trainee an additional
27 amount, not to exceed fifty dollars (\$50.00), on July 1 of any year in which
28 the balance of the Fund is less than twenty-five thousand dollars (\$25,000),
29 provided that any amount so assessed will be only so much as is needed to
30 raise the level of the Fund to twenty-five thousand dollars (\$25,000).

31 (d) The State Treasurer shall invest and reinvest the moneys in the Fund in a manner
32 provided by law, ~~provided that sufficient liquidity shall be maintained to satisfy claims~~
33 ~~authorized by the Board. The proceeds from the investments shall be deposited to the credit of~~
34 ~~the Fund.~~ law. The Board ~~Board~~, in its discretion, may use ~~any and all of the proceeds from the~~
35 ~~investments or funds that exceed twenty-five thousand dollars (\$25,000)~~ the Fund for any of
36 the following purposes:

37 (1) To advance education and research in the private protective services field for
38 the benefit of those licensed or registered under the provisions of this
39 Chapter and for the improvement of the industry.

40 (2) To underwrite educational seminars, training centers and other educational
41 projects for the use and benefit generally of ~~licensees~~ licensees, registrants,
42 and trainees.

43 (3) To sponsor, contract for and to underwrite any and all additional educational
44 training and research projects of a similar nature having to do with the
45 advancement of the private protective services field in North Carolina. The
46 Board shall have the authority to sponsor courses given by private
47 individuals, associations, or corporations. However, the Board shall only
48 grant funds as necessary to offset the actual cost of the educational course.
49 Any individual, association, or corporation receiving grant money from the
50 Board shall make the course available to the industry at large. Any
51 individual, association, or corporation receiving grant money from the Board

1 and advertising the course to the industry is required to include in its
2 advertising the following statement: "The course is being given in whole or
3 in part by a grant from the Private Protective Services Board."

4 (e) By a unanimous vote of the Board, funds in the Fund in excess of fifty thousand
5 dollars (\$50,000) may be converted to offset the operating expenses of the Board. However, in
6 converting the funds, the Board shall make findings of fact by a written order or resolution
7 supporting the need to make the conversion."

8 **SECTION 14.** G.S. 74C-31, 74C-32, and 74C-33 are repealed.

9 **SECTION 15.** This act becomes effective October 1, 2009.