

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 570*
PROPOSED COMMITTEE SUBSTITUTE H570-PCS30265-SU-14

Short Title: Amend Private Protective Services Act.

(Public)

Sponsors:

Referred to:

March 16, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PRIVATE PROTECTIVE SERVICES ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 74C-3(a) reads as rewritten:

"(a) As used in this Chapter, the term "private protective services profession" means and includes the following:

(1) Armored car profession. – Any person, firm, association, or corporation which for a fee or other valuable consideration provides secured transportation and protection from one place or point to another place or point of money, currency, coins, bullion, securities, checks, documents, stocks, bonds, jewelry, paintings, and other valuables. This definition does not include a person operating an armored car business pursuant to a motor carrier certificate or permit issued by the North Carolina Utilities Commission which grants operating rights for such business; however, armed armored car service guards shall be subject to the provisions of G.S. 74C-13.

(2) Repealed by Session Laws 1983, c. 786, s. 2.

(3) Redesignated as (a)(5a) by Revisor of Statutes. See Editor's notes.

(4) Courier service profession. – Any person, firm, association, or corporation which for a fee or other valuable consideration transports or offers to transport from one place or point to another place or point documents, papers, maps, stocks, bonds, checks, or other small items of value which require expeditious services. Armed courier service guards shall be subject to the provisions of G.S. 74C-13.

(5) Detection of deception examiner. – Any person, firm, association, or corporation which uses any device or instrument, regardless of its name or design, for the purpose of the detection of deception or any person who reviews the work product of an examiner including charts, tapes or other methods of record keeping for the purpose of detecting deception or determining accuracy.

(5a) Digital forensics examiner. – Any person who, on a contractual basis, engages in the practice of conducting examinations of digitally stored data to recover, image, analyze, or examine the data by using specialized software



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1 to determine responsibility or reconstruct usage of the data. However, a
2 digital forensics examiner shall not include any of the following:

- 3 a. An accountant.
4 b. A person employed to conduct network security operations regarding
5 network security violations.
6 c. A member of a network security compromise response team.
7 d. A person who analyzes computer or digital storage media for the
8 purpose of upgrading, maintaining, or repairing the system.
9 e. A person who uses utilities proprietary to the examined device to
10 recover data without the use of additional software, such as cellular
11 telephone call information.
12 f. Any other computer or digital media technician who is not
13 conducting imaging, analysis, or other activities under this
14 subdivision.
15 g. An officer, employee, or agent of the United States, this State, or any
16 political subdivision while the officer, employee, or agent is engaged
17 in the performance of his or her official duties within the course and
18 scope of his or her employment.

19 ~~(5a)~~(5b) Electronic countermeasures profession. – Any person, firm, association,
20 or corporation which for a fee or other valuable consideration discovers,
21 locates, or disengages by electronic, electrical, or mechanical means any
22 listening or other monitoring equipment surreptitiously placed to gather
23 information concerning any individual, firm, association, or corporation.

24 ~~(6)~~ Security guard and patrol profession. — Any person, firm, association, or
25 corporation that provides a security guard on a contractual basis for another
26 person, firm, association, or corporation for a fee or other valuable
27 consideration and performs one or more of the following functions:

- 28 a. ~~Prevention or detection of intrusion, entry, larceny, vandalism, abuse,~~
29 ~~fire, or trespass on private property.~~
30 b. ~~Prevention, observation, or detection of any unauthorized activity on~~
31 ~~private property.~~
32 c. ~~Protection of patrons and persons lawfully authorized to be on the~~
33 ~~premises or being escorted between premises of the person, firm,~~
34 ~~association, or corporation that entered into the contract for security~~
35 ~~services.~~
36 d. ~~Control, regulation, or direction of the flow or movement of the~~
37 ~~public, whether by vehicle or otherwise, only to the extent and for the~~
38 ~~time directly and specifically required to assure the protection of~~
39 ~~properties.~~

40 (7) Guard dog service profession. – Any person, firm, association, or
41 corporation which for a fee or other valuable consideration contracts with
42 another person, firm, association, or corporation to place, lease, rent, or sell a
43 trained dog for the purpose of protecting lives or property.

44 (8) Private detective or private investigator. – Any person who engages in the
45 profession of or accepts employment to furnish, agrees to make, or makes
46 inquiries or investigations concerning any of the following on a contractual
47 basis:

- 48 a. Crimes or wrongs done or threatened against the United States or any
49 state or territory of the United States.
50 b. The identity, habits, conduct, business, occupation, honesty,
51 integrity, credibility, knowledge, trustworthiness, efficiency, loyalty,

- activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of any person.
- c. The location, disposition, or recovery of lost or stolen property.
- d. The cause or responsibility for fires, libels, losses, accidents, damages, or injuries to persons or to properties.
- e. Securing evidence to be used before any court, board, officer, or investigative committee.
- f. Protection of individuals from serious bodily harm or death.

(8a) Security guard and patrol profession. – Any person, firm, association, or corporation that provides a security guard on a contractual basis for another person, firm, association, or corporation for a fee or other valuable consideration and performs one or more of the following functions:

- a. Prevention or detection of intrusion, entry, larceny, vandalism, abuse, fire, or trespass on private property.
- b. Prevention, observation, or detection of any unauthorized activity on private property.
- c. Protection of patrons and persons lawfully authorized to be on the premises or being escorted between premises of the person, firm, association, or corporation that entered into the contract for security services.
- d. Control, regulation, or direction of the flow or movement of the public, whether by vehicle or otherwise, only to the extent and for the time directly and specifically required to assure the protection of properties.

(9) Special limited guard and patrol profession. – Any person who is licensed under Chapter 74D of the General Statutes of North Carolina and provides armed alarm responders pursuant to G.S. 74C-13. Applicants for this limited license shall not be required to meet the experience requirements for a security guard and patrol license. Any experience gained under this limited license shall not be counted as experience for a security guard and patrol license."

SECTION 2. G.S. 74C-3(b)(13) reads as rewritten:

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

...

(13) A person who works regularly and exclusively as an employee of an employer in connection with the business affairs of that employer. ~~If the employee is an armed security guard and wears, carries, or possesses a firearm in the performance of the employee's duties, the provisions of G.S. 74C-13 apply.~~ However, the provisions of this Chapter shall apply if: (i) the employee is an armed security guard who wears, carries, or possesses a firearm in the performance of the employee's duties; or (ii) the person is an armed or unarmed security guard at an establishment that sells alcohol. The term 'establishment' shall include an eating establishment, a private club, or a restaurant as defined in G.S. 18B-1000.

...."

SECTION 3. G.S. 74C-7 reads as rewritten:

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

The Attorney General for the State of North Carolina shall have the power to investigate or cause to be investigated any complaints, allegations, or suspicions of wrongdoing or violations of this Chapter involving individuals licensed, or to be licensed, under this Chapter. Any investigation conducted pursuant to this section is deemed confidential and is not subject to

1 review under G.S. 132-1 until the investigation is complete and a report is presented to the
2 Board. However, the report may be released to the licensee after the investigation is complete
3 but before the report is presented to the Board."

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

- 5 "(c) (1) A business entity other than a sole proprietorship shall not do business under
6 this Chapter unless the business entity has in its employ a designated
7 resident qualifying agent who meets the requirements for a license issued
8 under this Chapter and who is, in fact, licensed under the provisions of this
9 Chapter, unless otherwise approved by the Board. Provided however, that
10 this approval shall not be given unless the business entity has and
11 continuously maintains in this State a registered agent who shall be an
12 individual resident in this State. Service upon the registered agent appointed
13 by the business entity of any process, notice, or demand required by or
14 permitted to be served upon the business entity by the Private Protective
15 Services Board shall be binding upon the business entity and the licensee.
16 Nothing herein contained shall limit or affect the right to serve any process,
17 notice, or demand required or permitted by law to be served upon a business
18 entity in any other manner now or hereafter permitted by law.
- 19 (2) For the purposes of the Chapter a qualifying agent means an individual in a
20 management position who is licensed under this Chapter and whose name
21 and address have been registered with the Director.
- 22 (3) In the event that the qualifying agent upon whom the business entity relies in
23 order to do business ceases to perform his duties as qualifying agent, the
24 business entity shall notify the Director within 10 working days. The
25 business entity must obtain a substitute qualifying agent within 30 days after
26 the original qualifying agent ceases to serve as qualifying agent unless for
27 good cause: (i) the Board, in its discretion, extends this period, for good
28 cause, for a extends the period of time not to exceed three months-months; or
29 (ii) following petition by an applicant and a hearing by the Board, the Board
30 extends the period of time not to exceed six months.
- 31 (4) The certificate authorizing the business entity to engage in a private
32 protective services profession shall list the name of at least one designated
33 qualifying agent. No licensee shall serve as the qualifying agent for more
34 than one business entity without prior approval of the Director, subject to the
35 approval of the Board.
- 36 (5) The Department of Justice may provide a criminal record check to the
37 Private Protective Services Board for a person who has applied for a new or
38 renewal license, registration, certification, or permit through the Private
39 Protective Services Board. The Board shall provide to the Department of
40 Justice, along with the request, the fingerprints of the applicant, a new
41 applicant, and the Department of Justice shall provide a criminal record
42 check based upon the applicant's fingerprints. The Board may request a
43 criminal record check from the Department of Justice for a renewal applicant
44 based upon the applicant's fingerprints in accordance with policy adopted by
45 the Board. The Board shall provide any additional information required by
46 the Department of Justice, and a form signed by the applicant consenting to
47 the check of the criminal record and to the use of the fingerprints and other
48 identifying information required by the State or national repositories. The
49 applicant's fingerprints shall be forwarded to the State Bureau of
50 Investigation for a search of the State's criminal history record file, and the
51 State Bureau of Investigation shall forward a set of the fingerprints to the

1 Federal Bureau of Investigation for a national criminal history check. The
2 Board shall keep all information pursuant to this subdivision privileged, in
3 accordance with applicable State law and federal guidelines, and the
4 information shall be confidential and shall not be a public record under
5 Chapter 132 of the General Statutes.

6 The Department of Justice may charge each applicant a fee for
7 conducting the checks of criminal history records authorized by this
8 subdivision."

9 **SECTION 5.** G.S. 74C-8(f) reads as rewritten:

10 "(f) Upon a finding that the application is in proper form, the completion of the
11 background investigation, and the completion of an examination required by the Board, the
12 Director shall submit to the Board the application and his recommendations. Upon completion
13 of the background investigation, the Director may in his discretion issue a temporary license
14 pending approval of the application by the Board at the next regularly scheduled meeting. The
15 Board shall determine whether to approve or deny the application for a license. Upon approval
16 by the Board, a license will be issued to the applicant upon payment by the applicant of the
17 initial license fee and the required contribution to the Private Protective Services ~~Recovery~~
18 Education Fund, and certificate of liability insurance."

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

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

28 **SECTION 7.** G.S. 74C-9(e) reads as rewritten:

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

- 31 (1) A nonrefundable initial application fee in an amount not to exceed one
32 hundred fifty dollars (\$150.00);
- 33 (2) A new or renewal license fee in an amount not to exceed two hundred fifty
34 dollars (\$250.00) per year of the license term;
- 35 (3) A new or renewal trainee permit fee in an amount not to exceed two hundred
36 fifty dollars (\$250.00) per year of the license term;
- 37 (4) A new or renewal fee for each license or duplicate license in addition to the
38 basic license referred to in subsection (2) in an amount not to exceed fifty
39 dollars ~~(\$50.00);~~ (\$50.00) per year of the license term;
- 40 (5) A late renewal fee to be paid within 90 days from the date the license,
41 registration, permit, or certification expires in addition to the renewal fee due
42 in an amount not to exceed one hundred dollars (\$100.00), if the ~~license~~
43 license, registration, permit, or certification has not been renewed on or
44 before the expiration date of the ~~license;~~ license, registration, permit, or
45 certification;
- 46 (6) A new, renewal, replacement or reissuance fee for an unarmed registration
47 identification card in an amount not to exceed thirty dollars (\$30.00);
- 48 (7) An application fee for a firearm registration permit not to exceed fifty dollars
49 (\$50.00);
- 50 (8) A new, renewal, replacement, or reissuance fee for a firearm registration
51 permit not to exceed thirty dollars (\$30.00);

- 1 (9) An application fee for certification as a certified trainer not to exceed fifty
2 dollars (\$50.00);
3 (10) A renewal or replacement fee for certified trainer certification not to exceed
4 twenty-five dollars (\$25.00);
5 (11) A new nonresident temporary permit fee not to exceed one hundred dollars
6 (\$100.00);
7 (12) An unarmed registration transfer fee not to exceed fifteen dollars (\$15.00);
8 (13) A branch office license fee not to exceed fifty dollars ~~(\$50.00); and~~(\$50.00)
9 per year of the license term;
10 (14) A special limited guard and patrol license fee not to exceed one hundred
11 dollars ~~(\$100.00);~~(\$100.00) per year of the license term; and
12 (15) A correctable error fee not to exceed one hundred dollars (\$100.00) for each
13 subsequent filing of an application following review and rejection of the
14 initial application.

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

18 **SECTION 8.** G.S. 74C-11(a) reads as rewritten:

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

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

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

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

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

- 41 (1) Made any false statement or given any false information in connection with
42 any application for a license, registration, or permit or for the renewal or
43 reinstatement of a license, registration, or permit.
44 (2) Violated any provision of this Chapter.
45 (3) Violated any rule adopted by the Board pursuant to the authority contained
46 in this Chapter.
47 (4) Repealed by Session Laws 1989, c. 759, s. 10.
48 (5) Impersonated or permitted or aided and abetted any other person to
49 impersonate a law enforcement officer of the United States, this State, any
50 other state, or any political subdivision of a state.

- 1 (6) Engaged in or permitted any employee to engage in a private protective
2 services profession when not lawfully in possession of a valid license issued
3 under the provisions of this Chapter.
- 4 (7) Willfully failed or refused to render to a client service as agreed between the
5 parties and for which compensation has been paid or tendered in accordance
6 with the agreement of the parties.
- 7 (8) Knowingly made any false report to the employer or client for whom
8 information is being obtained.
- 9 (9) Committed an unlawful breaking or entering, assault, battery, or kidnapping.
- 10 (10) Knowingly violated or advised, encouraged, or assisted the violation of any
11 court order or injunction in the course of business as a licensee.
- 12 (11) Repealed by Session Laws 1989, c. 759, s. 10.
- 13 (12) Undertaken to give legal advice or counsel or to in any way falsely represent
14 that he or she is representing any attorney or he or she is appearing or will
15 appear as an attorney in any legal proceeding.
- 16 (13) Issued, delivered, or uttered any simulation of process of any nature which
17 might lead a person or persons to believe that such simulation – written,
18 printed, or typed – may be a summons, warrant, writ or court process, or any
19 pleading in any court proceeding.
- 20 (14) Failed to make the required contribution to the Private Protective Services
21 ~~Recovery~~ Education Fund or failed to maintain the certificate of liability
22 insurance required by this Chapter.
- 23 (15) Violated the firearm provisions set forth in this Chapter.
- 24 (16) Repealed by Session Laws 1989, c. 759, s. 10.
- 25 (17) Failed to notify the Director by a business entity other than a sole
26 proprietorship licensed pursuant to this Chapter of the cessation of
27 employment of the business entity's qualifying agent within the time set
28 forth in this Chapter.
- 29 (18) Failed to obtain a substitute qualifying agent by a business entity within 30
30 days after its qualifying agent has ceased to serve as the business entity's
31 qualifying agent.
- 32 (19) Been judged incompetent by a court having jurisdiction under Chapter 35A
33 or former Chapter 35 of the General Statutes or committed to a mental health
34 facility for treatment of mental illness, as defined in G.S. 122C-3, by a court
35 under G.S. 122C-271.
- 36 (20) Failed or refused to offer a report to a client within 30 days of the client's
37 written request after the client has paid for services rendered.
- 38 (21) Been previously denied a license, registration, or permit under this Chapter
39 or previously had a license, registration, or permit revoked for cause. The
40 denial or revocation shall include a principal in the applicant's business.
- 41 (22) Engaged in a private protective services profession under a name other than
42 the name under which the license was obtained under the provisions of this
43 Chapter.
- 44 (23) Divulged to any person, except as required by law, any information acquired
45 by the license holder except at the direction of the employer or client for
46 whom the information was obtained. A licensee may divulge to any law
47 enforcement officer or district attorney or district attorney's representative
48 any information the law enforcement officer may require to investigate a
49 criminal offense with the prior approval and consent of the client.
- 50 (24) Fraudulently held himself or herself out as employed by or licensed by the
51 State Bureau of Investigation or any other governmental authority.

- 1 (25) Intemperate habits or lacks good moral character. The acts that are prima
2 facie evidence of intemperate habits or lack of good moral character under
3 G.S. 74C-8(d)(2) are prima facie evidence of the same under this
4 subdivision.
- 5 (26) Advertised or solicited business using a name other than that in which the
6 license was issued.
- 7 (27) Worn, carried, or accepted any badge or shield purporting to indicate that the
8 person is a law enforcement officer while licensed under the provisions of
9 this Chapter as a private investigator.
- 10 (28) Possessed or displayed a badge or shield while providing private protective
11 services that was not designed and approved by the Board pursuant to
12 G.S. 74C-5(12).
- 13 (29) Failed or refused to reasonably cooperate with the Board or its agents during
14 an investigation of any complaint, allegation, suspicion of wrongdoing, or
15 violation of this Chapter.
- 16 (30) Failed to properly make any disclosure to the Board or provide documents or
17 information required by this Chapter or rules adopted by the Board.
- 18 (31) Engaged in conduct constituting dereliction of duty or otherwise deceived,
19 defrauded, or harmed the public in the course of professional activities or
20 services.
- 21 (32) Demonstrated a lack of financial responsibility."

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

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

- 25 (1) A sworn court official.
- 26 (2) A holder of a company police commission under Chapter 74E of the General
27 Statutes."

28 **SECTION 11.** G.S. 74C-13(a) reads as rewritten:

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

35 **SECTION 12.** G.S. 74C-14 is repealed.

36 **SECTION 13.** G.S. 74C-21(a) reads as rewritten:

37 "(a) No law enforcement officer of the United States, this State, any other state, or any
38 political subdivision of a state shall be licensed as a private ~~detective~~ detective, digital forensics
39 examiner, or security guard and patrol licensee under this Chapter."

40 **SECTION 14.** Chapter 74C of the General Statutes is amended by adding a new
41 section to read:

42 **"§ 74C-23. Acquisition or change of ownership or control of licensed firm, association, or**
43 **corporation.**

44 In the event a company, firm, or corporation, including a limited liability corporation,
45 licensed under this Chapter transfers ownership, control, or a majority of assets to another
46 person, firm, association, or corporation, the person, firm, association, or corporation acquiring
47 control or ownership shall have the following responsibilities:

- 48 (1) Notify the Director of the acquisition or change of ownership or control by
49 registered mail within five business days from the date of the transaction.
- 50 (2) Describe the transaction that has occurred by providing the following
51 information:

- 1 (1) To advance education and research in the private protective services field for
2 the benefit of those licensed or registered under the provisions of this
3 Chapter and for the improvement of the industry.
- 4 (2) To underwrite educational seminars, training centers and other educational
5 projects for the use and benefit generally of ~~licensees~~licensees, registrants,
6 and trainees.
- 7 (3) To sponsor, contract for and to underwrite any and all additional educational
8 training and research projects of a similar nature having to do with the
9 advancement of the private protective services field in North Carolina. The
10 Board shall have the authority to sponsor courses given by private
11 individuals, associations, or corporations. However, the Board shall only
12 grant funds as necessary to offset the actual cost of the educational course.
13 Any individual, association, or corporation receiving grant money from the
14 Board shall make the course available to the industry at large. Any
15 individual, association, or corporation receiving grant money from the Board
16 and advertising the course to the industry is required to include in its
17 advertising the following statement: "The course is being given in whole or
18 in part by a grant from the Private Protective Services Board."
- 19 (e) By a unanimous vote of the Board, funds in the Fund in excess of fifty thousand
20 dollars (\$50,000) may be converted to offset the operating expenses of the Board. However, in
21 converting the funds, the Board shall make findings of fact by a written order or resolution
22 supporting the need to make the conversion."
- 23 **SECTION 16.** G.S. 74C-31, 74C-32, and 74C-33 are repealed.
- 24 **SECTION 17.** This act is effective when it becomes law.