

April 16, 2013

RE: SB 13-259, Mandatory Licensing of Colorado Private Investigators

My name is Rick Johnson, I have been a Colorado private investigator for the last 25 years. Prior to that, I spent ten years as a criminal investigator for the Denver and Jefferson County District Attorney Office's.

In 2011 the Colorado legislature passed a new bill that established voluntary licensing for private investigators in the state. The bill went into effect in July, 2011.

The law allows any individual who meets the requirements outlined in the regulatory measure to obtain a voluntary license. It also allows professional private investigators who otherwise qualify for this license to opt out. It also provides that those that don't meet the bill's minimum standards to continue working to further advance their skills level.

This legislation was opposed by more private investigators than those who pushed for its adoption. But PPIAC hired a prominent lobbyist, and convinced a sufficient number of lawmakers that there was a need for this legislation and that it was strongly supported by investigators. By making exaggerated projections of both the number investigators working in the state, and the level of interest in volunteer licensing, they convinced the Department of Regulatory Agencies that at least 250 PIs would successfully apply, and that the regulatory program could be cost effective and fully supported by those participating.

Based on those representations DORA set the one year fee at \$340.00. But, only 90 licenses were approved, and more than 20% of those came from professional investigation firms from out of state.

Obscured in their rush toward voluntarily licensing were a number of inconvenient facts, most notably that the level of interest outside the leadership of the PPIAC was low, and that voluntary licensing was little more than an advertising opportunity for established firms that did little to nothing to protect the public. Beyond that, the record of complaints, litigation or improper conduct by PIs in Colorado has been extremely limited, clearly calling into question the need for this legislation.

Unfortunately, the bill has had unintended consequences.

Because of the limited interest within the private investigator community the estimates of the cost for voluntary licensing was woefully low. While members of PPAIC estimated that fees for licenses would decline from the original \$340 annual fee to a level more like fees in other states.

Instead, the lack of support for voluntary licensing has caused the fees to rise in cost to approximately \$640 per year, effective in March of 2013. Whether there are sufficient licenses issued at this cost to reimburse the state for the additional regulatory costs incurred by the state, and whether those burdens will now fall to taxpayers, remains to be seen.

At the time this voluntary license was proposed, myself and dozens of other private investigators warned state lawmakers that in addition to creating an unnecessary regulatory bar to entry into the private investigator field, that this bill would fail of its own weight. There was no compelling need for licensing, no justification for a voluntary license, and the bill served no one but those who could use it to differentiate themselves from “unlicensed” investigators.

There were – and are – no fewer than 200 investigators in Colorado who are opposed to voluntary licensing. They are also opposed to the plan that PPIAC has now proposed to make up for the regulatory funding deficit – making these voluntary licenses mandatory upon all private investigators in the state.

It is the opinion of these investigators that the conversion of this bill to mandatory licensing is nothing more than a thinly veiled attempt to limit competition within the industry.

The stock in trade of Private investigators are their intuitive skills, insights, imagination and creative abilities to gain access to information. The mandatory licensing bill establishes only limitations to those skills. It does not establish continuing professional education, it does not provide for entry-level opportunities, nor does it do anything to protect consumers beyond those protections that already exist today.

Let’s examine some facts:

1. This bill will do nothing to protect the public against private investigators engaging in criminal or prohibited behavior. If you will check the record, this is a solution in search of a problem: very few PIs in Colorado have ever been charged with a crime while acting as an investigator.

2. If an investigator is subject to a mandatory license, that license tells the public that they are hiring a trained professional who adheres to ethical practices. That sounds good but the evidence of ethical behavior is demonstrated in performance. And a license – despite its experience requirements - is no guarantee that a licensed investigator will behave legally or ethically. If that were the case, licensing in other states would have a much larger impact in limiting such behaviors – a situation that we can see from the public record in those states that is not the case.
3. The proponents of this bill have argued that Colorado is one of only three states without a PI license. The argument assumes something not in evidence, that those licensing efforts are effective. The range of licensing requirements across the US varies widely. There is no standard license requirement that applies to other states. Reciprocal licenses allow investigators from other states to qualify for those licenses with a minimum of information, follow-up, or supervision.
4. Unlike many professions - doctors, engineers, lawyers, public accountants, architects, or plumbers – private investigators who are most successful do not operate from a doctrine that is easily quantifiable or easily subject to examination to test their proficiency. Private investigators more often possess the skills of understanding human nature, being able to extract information from those who are reluctant to share what they know, or use skills of reasoning and deduction to gain leads to the information that helps clients meet their needs. While private investigators like police can unravel crimes, this is not the stuff of complex systems that are required to say, understand the intricacies of professional auditing. While you may be able to test private investigators on certain legal aspects of their work – those same rules may apply to businessmen in general, corporate executives or others who do not need a license to engage in their trade. Licenses should be meaningful, protect the public, and verify qualifications to perform difficult or highly skilled work such as the potentially life-altering work in medicine or law. None of these issues apply to this profession.

The most legitimate evaluation of the skills of a private investigator is weighed not by the government, but by the client. Investigators who do not demonstrate those skills don't get repeat business, and are soon out of business.

5. The 2011 DORA report addressed the need to weigh protection of consumers from harm against unnecessary government regulation, and the chilling effect of such regulation on business within the state. DORA indicates a lack of evidence of consumer harm to the public directly attributable to individuals working as private investigators since 1984. DORA went on to state that misconduct by individuals acting as private investigators is covered by current criminal and civil laws. Which leads me to ask, why are we considering this?

6. I assume you will be hearing again what PPIAC is conveniently telling some legislators that there are recent problems and a lack of professionalism, even alleged criminal behavior by some Colorado PIs. But I would challenge them to point to hard evidence instead of vague and convenient allusions to such events, and I would challenge you as legislators to ask to see the proof. Because someone says it doesn't mean it's true. This is what we in the business of private investigations soon discover.

7. If I am required to be licensed by Colorado is it going to improve my performance, or my bottom line? It may reduce the number of PIs in the state who don't meet the 4,000 hours of experience required under the supervision of a professional investigator. It will definitely prevent me from referring work to some highly competent associates I use in my work, former military investigators, former police investigators, former journalists, who don't meet these highly stylized requirements, and who will leave the business. In the end, this licensing requirement will benefit a few who believe it is in their interest to drive competitors from the field. That is not what we should be about.

And then we confront the cost of the license. This, I am afraid, is the true motivation for this mandatory licensing bill. This limited contingent of individuals who would push this legislation off on others wants to drive down the cost of their ill-conceived voluntary licensing measure. The only way to do that is to force more individuals to participate.

Along with the cost of the license, there is a bond requirement. Why must I purchase a bond when I carry a \$1 million E/O insurance policy? These costs will be passed on to the consumer.

This bill addresses an apprentice program for PI's. The proposal is vague and poorly outlined. It leaves a number of unanswered questions: whether apprentice PIs should pay a full fee; whether they can be supervised by more than one investigator; and, even the actual meaning of "indirect supervision." Does that allow apprentices to conduct surveillance, do client intake interviews, interview witnesses on behalf of attorneys presenting evidence in court? Too much is open to interpretation to be meaningful.

The independent contractors that I routinely use must have their business registered with the Colorado Secretary of State's Office and must carry their own E/O insurance policy and my firm is listed on that certificate.

Must an apprentice be covered under a supervisors E&O program? If they do something that triggers a lawsuit, is the indirect supervising investigator liable? Is an apprentice an independent contractor or is the supervisor responsible for payroll taxes, workman's comp? This bill does not address those issues. It creates a slippery slope. And because those who are pushing this program are in a hurry – they have introduced this measure

late in the session as if the issue is urgent – there is little time to get those questions answered.

Private investigation services in this state have developed traditional approaches to the needs of the industry. Some investigators use college students, interns, or others who show an interest or aptitude for this work, to perform routine functions. That is a practice that under the restrictions of mandatory licensing may dry up for a lack of clarity on the issues I have mentioned. Not only are those individuals unlikely to apply for an apprentice license, for which they will be charged a fee and be subject to scrutiny of regulators, but investigators may be forced instead to hire those limited number of licensed investigators in order to avoid the uncertainty that this bill creates.

I am the founder of the Private Investigators Academy of the Rockies and many of my students come to the academy with no experience. Others have years of experience and are interested in refreshing their skills or coming up to date on current practices and opportunities. Members of both groups have gone on to provide valuable services to clients within the state. But this licensing scheme will likely make most of those individuals ineligible to go on and work within the profession. That will result in gentrification and eventually an insufficient number of competent investigators to cover the needs within the state.

I am also founder and president of the Colorado Society of Private Investigators (www.colopi.org). Many of the members of this organization are also new to the field and don't meet the minimum (and arbitrary) hours requirement. This legislation will devalue this organization and will adversely affect many of its members who also don't meet those requirements. I am aware of at least 25 individuals who are similarly positioned who bring a high level of skills to the profession, but will not be able to qualify for a mandatory license.

Please keep in mind, Colorado does not have a concentrated population with millions of residents, such as coastal cities of San Francisco, Dallas, New York, or Chicago. The proposed 'apprentice' program, after some modifications might work there. But Colorado can't support it, and the pipeline of new investigators will be dependent on those few established agencies that are currently pushing for this legislation. Once again, the interest of the minority will outweigh the interest of the majority.

A majority of Colorado's existing PI's operate from their homes and don't have enough work to keep themselves working full time. As a result many supplement their income with private investigation work. That is another reason the 'apprentice' program will not work. It sounds good, but it will put many out of work.

These arguments that I have outlined here are ample to justify a "no" vote on this legislation. And I urge you to take that approach. At the minimum, this issue needs greater legislative review before a mandatory licensing measure is even considered. The

work of private investigators is about answering questions accurately. It is clear here that very important questions here have not been resolved and no licensing effort should go forward until those answers are found, until the public has an opportunity to address issues here, and until a full assessment of the costs to the state and its citizens can be understood in the bright light of full disclosure.

Last but not least, those of us who oppose this legislation do not have a lobbyist to meet with legislators and argue our position. But this opposition is knowledgeable, available and well informed on the genesis of this legislation, the motivations behind it, and the damage that it can cause within this industry. If you would like the other side of the story, we are available to explain why we believe that this is special interest legislation that will put good people out of work, while failing to solve any problem and instead simply increase the size and cost of government.

This is a bi-partisan issue. Professionalism and credibility are earned through hard work, not granted by a state issued license.

Thank you for your time.

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