

ARTICLE 58.5
Private Investigators

12-58.5-101. Short title. This Article Shall Be Known and May Be Cited as the "Private Investigators Voluntary Licensure Act".

12-58.5-102. Legislative declaration. The General Assembly Hereby finds that in order to protect the citizens of the state and allow private investigators access to public records, it is important to create a licensure program to allow qualified private investigators, at their option, to obtain a state-issued license to conduct private investigations.

12-58.5-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "applicant" means a private investigator who applies for an initial or renewal license pursuant to this article.

(2) "Director" means the Director of the division or the Director's designee.

(3) "division" means the division of registrations in the department of regulatory agencies.

(4) "licensed private investigator" means a private investigator licensed by the Director pursuant to this article.

(5) "private investigation" means an investigation for the purpose of obtaining information pertaining to:

(a) a crime, wrongful act, or threat against the United States or any state or territory of the United States;

(b) the identity, reputation, character, habits, conduct, business occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movements, whereabouts, affiliations, associations, or transactions of a person or group of persons;

(c) the credibility of witnesses or other persons;

(d) the whereabouts of missing persons;

(e) the determination of the owners of abandoned property;

(f) the causes and origin of, or responsibility for, a fire, libel, slander, a loss, an accident, damage, or an injury to a person or to real or personal property;

(g) the business of securing evidence to be used before an investigatory committee or board of award or arbitration or in the preparation for or in a civil or criminal trial;

(h) the business of locating persons who have become delinquent in their lawful debts, either when hired by an individual or collection agency or through direct purchase of the debt from a financial institution or entity owning the debt or judgment.

(6) (a) "private investigator" means a person who, for consideration, engages in business or accepts employment to conduct private investigations.

(b) "private investigator" does not include:

(I) a collection agency, as defined in section 12-14-103;

(II) a person conducting an investigation on the person's own behalf, or an employee conducting an investigation on behalf of the employer;

(III) an employee or independent contractor of an attorney licensed to practice law in this state;

(IV) a certified peace officer of a law enforcement agency operating in his or her official capacity;

(V) a consumer reporting agency, as defined in section 12-14-103;

(VI) a certified public accountant certified or authorized to provide accounting services in the state pursuant to article 2 of this title and any employee or affiliate of an accounting firm registered pursuant to section 12-2-117;

(VII) an investigator employed by a public or governmental agency;

(VIII) a journalist or genealogist; or

(IX) a person serving process.

12-58.5-104. Voluntary license - title protection - penalty.

(1) (a) by July 1, 2012, a private investigator conducting private investigations in this state who meets the requirements of section 12-58.5-105 may obtain a license from the Director. Only a private investigator who obtains a license pursuant to section 12-58.5-105 shall hold himself or herself out as, or use the title of, a "Licensed private investigator".

(b) nothing in this article requires a private investigator engaging in private investigations in this state to obtain a license under this article, but a private investigator who is not so licensed shall not refer to himself or herself as a "licensed private investigator".

(2) any person who holds himself or herself out as or uses The title "licensed private investigator" without an active license Issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and, for the second or any subsequent offense, commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

12-58.5-105. Private investigator voluntary license - qualifications - fees - renewal.

(1) upon application in the form and manner determined by the Director, payment of the required fee, submission of business registration documentation as required by subsection (3) of this section, and satisfaction of the requirements of subsection (2) of this section, the Director shall issue an initial or renewal license to an applicant who provides evidence satisfactory to the Director that he or she:

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

(b) is lawfully present in the United States;

(c) (I) has at least four thousand hours of verifiable, applicable experience, as determined by the Director within the five years immediately preceding the date of application; or

(II) has at least two thousand hours of verifiable, applicable experience, as determined by the Director, within the five years immediately preceding the date of application plus an amount of postsecondary education determined by the Director; and

(d) has knowledge and understanding of the statutes and rules affecting the ethics and activities of licensed private investigators in this state.

(2) in addition to the requirements of subsection (1) of this section, each license applicant shall have his or her fingerprints taken by a local law enforcement agency for the purpose of obtaining a fingerprint-based criminal history record check. The applicant is required to submit payment by certified check or money order for the fingerprints and for the actual costs of the record check at the time the fingerprints are submitted to the Colorado Bureau of Investigation. Upon receipt of fingerprints and receipt of the payment for costs, the Colorado Bureau of Investigation shall conduct a state and national fingerprint-based criminal history record check utilizing records of the Colorado Bureau of Investigation and the Federal Bureau of Investigation and shall forward the results of the criminal history record check to the Director.

(3) if an applicant has registered as a business entity with the Secretary of State, at the time of application for a license the applicant shall provide documentation to the Director that the applicant's business registration is current and in good standing with the Secretary of State.

(4) an applicant for licensure shall pay license, renewal, and reinstatement fees established by the Director pursuant to section 24-34-105, C.R.S. all licenses shall be renewed or reinstated pursuant to a schedule established by the Director and pursuant to section 24-34-102 (8), C.R.S. if a person fails to renew his or her license pursuant to the schedule established by the Director, the license expires and the person shall not hold himself or herself out as a licensed private investigator until he or she pays the appropriate fees to reinstate the license.

12-58.5-106. Director may promulgate rules. In addition to all other powers and duties conferred or imposed upon the Director by this article or by any other law, the Director may promulgate rules pursuant to section 24-4-103, C.R.S., to implement this article.

12-58.5-107. Disciplinary actions - grounds for discipline.

(1) the Director may deny, suspend, revoke, or place on probation a private investigator's license if the applicant:

(a) violates any order of the Director or any provision of this article or of rules established under this article;

(b) fails to meet the requirements of section 12-58.5-105 or uses fraud, misrepresentation, or deceit in applying for or attempting to apply for a license;

(c) is convicted of or has entered a plea of guilty or nolo contendere to a felony, to an offense, the underlying factual basis of which has been found by the court to involve unlawful sexual behavior, domestic violence, as defined in section 18-6-800.3 (1), C.R.S., or stalking, as defined in section 18-3-602, C.R.S.; or to violation of a protection order, as defined in section 18-6-803.5, C.R.S. in considering the disciplinary action, the Director shall be governed by the provisions of section 24-5-101, C.R.S., in considering the conviction or plea;

(d) has been subject to discipline related to the practice of private investigations in another jurisdiction. Evidence of disciplinary action in another jurisdiction is prima facie evidence for denial of a license or other disciplinary action if the violation would be grounds for disciplinary action in this state.

(2) the Director may adopt rules establishing fines that he or she may impose on a licensee, which rules must include a graduated fine structure, with a maximum allowable fine of not more than three thousand dollars per violation. The Director shall transmit any fines he or she collects from a licensee to the state treasurer for deposit in the general fund.

(3) the Director need not find that the actions that are grounds for discipline were willful but may consider whether the actions were willful when determining the nature of disciplinary Sanctions to be imposed.

(4) (a) the Director may commence a proceeding to discipline a licensee when the Director has reasonable grounds to believe that the licensee has committed an act enumerated in this section.

(b) in any proceeding held under this section, the Director may accept as evidence of grounds for disciplinary action any disciplinary action taken against a licensee in another jurisdiction if the violation that prompted the disciplinary action in the other jurisdiction would be grounds for disciplinary action under this article.

(5) the Director shall conduct disciplinary proceedings in accordance with article 4 of title 24, C.R.S., and the Director or administrative law judge appointed by the Director pursuant to paragraph (c) of subsection (6) of this section shall conduct the hearing and opportunity for review pursuant to that article. The Director has the authority to exercise all powers and duties conferred by this article during the disciplinary proceedings.

(6) (a) the Director may request the Attorney General to seek an injunction, in any court of competent jurisdiction, to enjoin a person from committing an act prohibited by this article. When seeking an injunction under this paragraph (a), the Attorney General is not required to allege or prove the inadequacy of any remedy at law or that substantial or irreparable damage is likely to result from a continued violation of this article.

(b) (I) the Director may investigate, hold hearings, and gather evidence in all matters related to the exercise and performance of the powers and duties of the Director.

(II) in order to aid the Director in any hearing or Investigation instituted pursuant to this section, the Director or an administrative law judge appointed pursuant to paragraph (c) of this subsection (6) may administer oaths, take affirmations of witnesses, and issue subpoenas compelling the attendance of witnesses and the production of all relevant records, papers, books, documentary evidence, and materials in any hearing, investigation, accusation, or other matter before the Director or an administrative law judge.

(III) upon failure of any witness or licensee to comply with a subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the Director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring the person or licensee to appear before the Director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in

question. If the person or licensee fails to obey the order of the court, the court may hold The person or licensee in contempt of court.

(c) the Director may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to conduct hearings, take evidence, make findings, and report such findings to the Director.

(7) (a) the Director, the Director's staff, a person acting as a witness or consultant to the Director, a witness testifying in a proceeding authorized under this article, or a person who lodges

a complaint pursuant to this article is immune from liability in a civil action brought against him or her for acts occurring while acting in his or her capacity as Director, staff, consultant, or witness, respectively, if the individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts.

(b) a person participating in good faith in making a complaint or report or in an investigative or administrative proceeding pursuant to this section is immune from any civil or criminal liability that otherwise might result by reason of the participation.

(8) a final action of the Director is subject to judicial review by the court of appeals pursuant to section 24-4-106 (11), C.R.S. the Director may institute a judicial proceeding in Accordance with section 24-4-106, C.R.S., to enforce an order of the Director.

(9) when a complaint or an investigation discloses an instance of misconduct that, in the opinion of the Director, warrants formal action, the Director shall not resolve the complaint by a deferred settlement, action, judgment, or prosecution.

(10) (a) if it appears to the Director, based upon credible evidence as presented in a written complaint, that a licensee is acting in a manner that is an imminent threat to the health and safety of the public, or a person is holding himself or herself out as or is using the title "licensed private investigator" without having obtained a license, the Director may issue an order to cease and desist the activity. The Director shall set forth in the order the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unregistered practices immediately cease.

(b) within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (10), the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. The Director or administrative law judge, as applicable, shall conduct the hearing pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(11) (a) if it appears to the Director, based upon credible evidence as presented in a written complaint, that a person has violated any other portion of this article, in addition to any specific powers granted pursuant to this article, the Director may issue to the person an order to show cause as to why the Director should not issue a final order directing the person to cease and desist from the unlawful act or unregistered practice.

(b) the Director shall promptly notify the person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (11) of the issuance of the order and shall include in the notice a copy of the order, the factual and legal basis for the order, and the date set by the Director for a hearing on the order. The Director may serve the notice on the person against whom the order has been issued by personal service, by first-class, postage-prepaid united states mail, or in another manner as may be practicable. Personal service or mailing of an order or document pursuant to this paragraph (b) constitutes notice of the order to the person.

(c) (I) the Director shall hold the hearing on an order to show cause no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the Director as provided in paragraph (b) of this subsection (11). The Director may continue the hearing by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the Director hold the hearing later than sixty calendar days after the date of transmission or service of

the notification.

(II) if a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (11) does not appear at the hearing, the Director may present evidence that notification was properly sent or served on the person pursuant to paragraph (b) of this subsection (11) and such other evidence related to the matter as the Director deems appropriate. The Director shall issue the order within ten days after the Director's determination related to reasonable attempts to notify the respondent, and the order becomes final as to that person by operation of law. The hearing must be conducted pursuant to Sections 24-4-104 and 24-4-105, C.R.S.

(III) if the Director reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required registration, or has or is about to engage in acts or practices constituting violations of this article, the Director may issue a final cease-and-desist order directing the person to cease and desist from further unlawful acts or practices.

(IV) the Director shall provide notice, in the manner set forth in paragraph (b) of this subsection (11), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (iii) of this paragraph (c) is effective when issued and is a final order for purposes of judicial review.

(12) if it appears to the Director, based upon credible evidence presented to the Director, that a person has engaged or is about to engage in an act or practice constituting a violation of this article, a rule promulgated pursuant to this article, or an order issued pursuant to this article; or an act or practice constituting grounds for administrative sanction pursuant to this article, the Director may enter into a stipulation with the person.

(13) if a person fails to comply with a final cease-and-desist order or a stipulation, the Director may request the Attorney General or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested the attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(14) a person aggrieved by the final cease-and-desist order may seek judicial review of the Director's determination or of the Director's final order as provided in subsection (8) of this section.

(15) (a) when a complaint or investigation discloses an instance of misconduct that, in the opinion of the Director, does not warrant formal action by the Director but that should not be dismissed as being without merit, a letter of admonition may be issued and sent, by certified mail, to the licensed private investigator.

(b) when the Director sends a letter of admonition to a licensed private investigator, the Director shall advise the private investigator that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(c) if the licensed private investigator timely requests adjudication, the Director shall vacate the letter of admonition and process the matter by means of formal disciplinary proceedings.

(16) when a complaint or investigation discloses an instance of conduct that does not warrant formal action by the Director and, in the opinion of the Director, the complaint should be dismissed, but the Director has noticed indications of possible errant conduct by the licensed private investigator that could lead to serious consequences if not corrected, the Director may send the licensed private investigator a confidential letter of concern.

12-58.5-108. Revocation. A person whose license is revoked is ineligible to apply for a license under this article for at least two years after the date of revocation of the license. The Director shall treat a subsequent application for licensure from a person whose license was revoked as an application for a new license under this article.

12-58.5-109. Fees - cash fund. The division shall transmit all fees collected pursuant to this article to the state treasurer, who shall credit the fees to the division of registrations cash fund created pursuant to section 24-34-105 (2) (b), C.R.S. the General Assembly shall make annual appropriations from the Division of Registrations cash fund for expenditures of the division incurred in the performance of its duties under this article.

12-58.5-110. Repeal of article - review of functions. This article is repealed, effective September 1, 2016. Prior to its repeal, the powers, duties, and functions of the Director regarding the licensure of private investigators as specified in this article shall be reviewed as provided in section 24-34-104, C.R.S. Section 2. 24-34-104 (47.5), Colorado Revised Statutes, is amended by the addition of a new paragraph to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (47.5) the following agencies, functions, or both, shall terminate on September 1, 2016:

(I) the voluntary licensing of private investigators by the Director of the Division of Registrations in accordance with Article 58.5 of title 12, C.R.S.

Section 3. Appropriation.

(1) in addition to any other appropriation, there is hereby appropriated, out of any moneys in the Colorado Bureau of Investigation identification unit fund created in section 24-33.5-426, Colorado Revised Statutes, not otherwise appropriated, to the Department of Public Safety, for allocation to the Colorado Bureau of Investigation, for the colorado crime information center, identification, for the fiscal year beginning July 1, 2011, the sum of nineteen thousand seven hundred fifty dollars (\$19,750) cash funds, or so much thereof as may be necessary, for the implementation of this act.

(2) in addition to any other appropriation, there is hereby appropriated, out of any moneys in the division of registrations cash fund created in section 24-34-105 (2) (b) (i), Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for allocation to the executive Director's office, for legal services, for the fiscal year beginning July 1, 2011, the sum of seven thousand three hundred thirty-seven dollars (\$7,337) cash funds, or so much thereof as may be necessary, for the implementation of this act.

(3) in addition to any other appropriation, there is hereby appropriated, out of any moneys in the division of registrations cash fund created in section 24-34-105 (2) (b) (i), Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for allocation to the division of registrations, for the fiscal year beginning July 1, 2011, the sum of seventy-five thousand one hundred ninety-six dollars (\$75,196) cash funds and 1.0 fte, or so much thereof as may be necessary, for the implementation of this act.

(4) in addition to any other appropriation, there is hereby appropriated to the department of law, for the fiscal year beginning July 1, 2011, the sum of seven thousand three hundred thirty-seven dollars (\$7,337), or so much thereof as may be necessary, for the provision of legal services to the Department of Regulatory Agencies related to the implementation of this act. Said sum shall be from reappropriated funds received from the department of regulatory agencies out of the appropriation made in subsection (2) of this section.

Section 4. Act subject to petition - effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the General Assembly (August 10, 2011, if adjournment sine die is on May 11, 2011); except that, if a referendum petition is filed pursuant to section 1 (3) of article v of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be held in November 2012 and shall take effect on the date of the official declaration of the vote thereon by the governor.
