

SECOND REGULAR SESSION

SENATE BILL NO. 1277

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR YECKEL.

Read 1st time February 19, 2004, and ordered printed.

TERRY L. SPIELER, Secretary.

4639S.011

AN ACT

To amend chapter 324, RSMo, by adding thereto twelve new sections relating to the creation of a board of licensed private fire investigator examiners, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 324, RSMo, is amended by adding thereto twelve new sections, to be known as sections 324.930, 324.933, 324.936, 324.939, 324.942, 324.945, 324.948, 324.951, 324.954, 324.957, 324.960, and 324.965, to read as follows:

324.930. For the purposes of sections 324.930 to 324.965, the following terms mean:

- (1) "Board", the board of licensed private fire investigator examiners;
- (2) "Client", any person who engages the services of a private fire investigator;
- (3) "Division", the division of fire safety within the department of public safety;
- (4) "Insurance adjuster", any person who receives any consideration, either directly or indirectly, for adjusting in the disposal of any claim under or in connection with a policy of insurance or engaging in soliciting insurance adjustment business;
- (5) "License", a private fire investigator license;
- (6) "Licensed private fire investigator", any person who receives any consideration, either directly or indirectly, for engaging in the investigation of the origin, cause, or responsibility of fires;
- (7) "Licensed private fire investigator agency", a person or firm that employs any person to engage in the investigation of fires to determine the origin, cause, and responsibility of such fires;
- (8) "Licensed private fire investigation", the furnishing of, making of, or agreeing to make any investigation of a fire for the origin, cause, or responsibility

of such fire;

(9) "Organization", a corporation, trust, estate, partnership, cooperation, or association;

(10) "Person", an individual;

(11) "Principal place of business", the place where the licensee maintains a permanent office which may be a residence or business address.

324.933. 1. The "Board of Licensed Private Fire Investigator Examiners" is hereby created within the division of fire safety. The board shall be composed of six members appointed by the governor, with the advice and consent of the senate. The board shall consist of:

(1) The state fire marshal, or his or her designee;

(2) A representative of a private fire investigation agency;

(3) A representative of the insurance industry;

(4) A representative of the Missouri chapter of the International Association of Arson Investigators;

(5) A representative of the Professional Fire and Fraud Investigators Association;

(6) A representative of the Kansas City Arson Task Force; and

(7) One person who is an independent private fire investigator.

2. Each member of the board shall be a citizen of the United States, a resident of this state, at least thirty years of age, and shall have been actively engaged in fire investigation for the previous five years. No more than one board member shall be employed by or affiliated with the same licensed private fire investigation agency. The initial board members shall not be required to be licensed but shall obtain a license within one hundred eighty days after appointment to the board.

3. The members of the board shall be appointed for terms of three years, except those first appointed, in which case two members shall be appointed for terms of three years, two members shall be appointed for terms of two years, and two members shall be appointed for a one-year term. Any vacancy on the board shall be filled for the remainder of the unexpired term of that member. The members of the board shall serve without pay, but they shall receive per diem expenses in an equivalent amount as allowed for members of the general assembly.

324.936. The following persons or organizations shall not be deemed to be engaging in licensed private fire investigation:

(1) Any officer or employee of the United States, this state, or a political subdivision of this state, while engaged in the performance of the officer's or employee's official duties;

- (2) An attorney performing duties as an attorney;
- (3) An investigator who is an employee of an insurance company;
- (4) Insurers, agents, and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them;
- (5) An insurance adjuster; or
- (6) An investigator employed by and under the supervision of a licensed attorney while acting within the scope of employment, who does not represent himself or herself to be a licensed private fire investigator.

324.939. 1. Every person desiring to be licensed in this state as a licensed private fire investigator or licensed private fire investigator agency shall make an application to the board. An application for a license pursuant to the provisions of sections 324.930 to 324.965 shall be on a form prescribed by the board and accompanied by the required application fee. An application shall be verified and shall include:

- (1) The full name and business address of the applicant;
- (2) The name that the applicant intends to do business under;
- (3) A statement as to the general nature of the business that the applicant intends to engage in;
- (4) Two recent passport photographs of the applicant and two classifiable sets of the applicant's fingerprints;
- (5) A verified statement of the applicant's experience qualifications; and
- (6) Such other information, evidence, statements, or documents as may be required by the state fire marshal.

2. To be eligible for licensure, the applicant shall:

- (1) Be at least twenty-one years of age;
- (2) Be a citizen of the United States;
- (3) Not have a felony conviction or a conviction of a crime involving moral turpitude;
- (4) Provide proof of liability insurance with amount to be no less than one million dollars in coverage; and
- (5) Comply with such other qualifications as the board shall require.

For the purposes of sections 324.930 to 324.965, the record of conviction, or a certified copy thereof, shall be conclusive evidence of such conviction, and a plea or verdict of guilty is deemed to be a conviction within the meaning thereof.

3. The board shall require as a condition of licensure that the applicant:

- (1) Successfully complete a course of training approved by the state fire marshal's office;
- (2) Pass a written examination as evidence of knowledge of fire

investigation. Certification as a fire investigator by the state fire marshal or other agencies approved by the state fire marshal shall constitute passing a written examination;

(3) Provide a background check from an authorized state law enforcement agency. The board shall conduct a complete investigation of the background of each applicant for licensure as a licensed private fire investigator or agency to determine whether the applicant is qualified for licensure pursuant to sections 324.930 to 324.965; and

(4) Pass any other basic qualification requirements as the board shall outline.

4. The board may deny a request for a license if the applicant has:

(1) Committed any act that, if committed by a licensee, would be grounds for the suspension or revocation of a license pursuant to the provisions of sections 324.930 to 324.965;

(2) Been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere in a criminal prosecution under the laws of any state or the United States for any offense reasonably related to the qualifications, functions, or duties of any profession licensed or regulated under this chapter or for any offense an essential element of which is fraud, dishonesty, or an act of violence, or for any offense involving moral turpitude, whether or not a sentence is imposed;

(3) Been refused a license pursuant to the provisions of sections 324.930 to 324.965 or had a license revoked in this state or in any other state;

(4) Prior to being licensed, committed, aided, or abetted the commission of any act that requires a license pursuant to sections 324.930 to 324.965; and

(5) Knowingly made any false statement in the application.

5. Every application submitted pursuant to the provisions of sections 324.930 to 324.965 shall be accompanied by a fee as determined by the board as follows:

(1) A separate fee shall be paid for an individual license, agency license, and employees being licensed to work under an agency license; and

(2) If a license is issued for a period of less than two years, the fee shall be prorated for the months, or fraction thereof, for which the license is issued.

6. All fees required pursuant to this section shall be paid to and collected by the division of fire safety and transmitted to the department of revenue for deposit in the state general revenue fund. The board shall set fees at a level to produce revenue that will not substantially exceed or fail to cover the costs and expenses of administering sections 324.930 to 324.965. These fees shall be exclusive and no municipality may require any person licensed pursuant to sections 324.930 to 324.965 to furnish any bond or pass any examination to practice as a licensed

private fire investigator.

7. Renewal of a license shall be made in the manner prescribed by the board, including the payment of a renewal fee.

324.942. 1. The board shall determine the form of the license which shall include:

- (1) The name of the licensee;
- (2) The name under which the licensee is to operate; and
- (3) The number and date of the license.

2. The license shall be posted at all times in a conspicuous place in the principal place of business of the licensee.

3. Upon the issuance of the license, a pocket card of such size, design, and content as determined by the board shall be issued to each licensee. Such card shall be evidence that the licensee is licensed pursuant to the provisions of sections 324.930 to 324.965. When any person to whom a card is issued terminates such person's position, office, or association with the licensee, the card shall be surrendered to the licensee and within five days thereafter shall be mailed or delivered by the licensee to the board for cancellation.

324.945. 1. The owner of a company seeking any agency license must first be licensed as a private fire investigator. The agency may hire individuals to work for the agency whom shall conduct investigations for such agency only. Persons hired shall make application as determined by the board and shall meet all requirements set forth by the board. They shall not be required to meet any experience requirements and shall be allowed to begin work immediately. Employees shall attend an approved training program within a time to be determined by the board and will be under the direct supervision of a licensed private fire investigator until all requirements are met.

2. A licensee shall at all times be legally responsible for the good conduct of each of the licensee's employees or agents while engaged in the business of the licensee. A licensee is legally responsible for any acts committed by the licensee's employees or agents which are in violation of sections 324.930 to 324.965. A person receiving an agency license shall directly manage the agency and employees.

3. Each licensee shall maintain a record containing such information relative to the licensee's employees as may be prescribed by the board. Such licensee shall file with the board the complete address of the licensee's principal place of business including the name and number of the street. The board may require the filing of other information for the purpose of identifying such principal place of business.

324.948. No licensee or officer, director, partner, associate, or employee of

the licensee shall:

(1) Knowingly make any false report to his or her employer or client for whom information was being obtained;

(2) Cause any written report to be submitted to a client except by the licensee and the person submitting the report shall exercise diligence in ascertaining whether or not the facts and information in such report are true and correct;

(3) Use a title, wear a uniform, use an insignia or identification card, or make any statement with the intent to give an impression that such person is connected in any way with the federal or state government or any political subdivision of the federal or state government;

(4) Appear as an assignee party in any proceeding involving claim and delivery, replevin or other possessory action, action to foreclose a chattel mortgage, mechanic's lien, materialman's lien, or any other lien;

(5) Manufacture false evidence;

(6) Allow anyone other than the individual licensed by the state to conduct an investigation; or

(7) Assign or transfer a license issued pursuant to sections 324.930 to 324.965.

324.951. 1. Every advertisement by a licensee soliciting or advertising business shall contain the licensee's name and address as they appear in the records of the board.

2. A licensee shall not advertise or conduct business from any address in this state other than that shown on the records of the board as the licensee's principal place of business unless the licensee has received a branch office certificate for such location after compliance with the provisions of sections 324.930 to 324.965 and such additional requirements necessary for the protection of the public as the board may prescribe by regulation. A licensee shall notify the board in writing within ten days after closing or changing the location of a branch office.

324.954. 1. The board may deny a request for a license, or may suspend or revoke a license issued pursuant to sections 324.930 to 324.965, or censure or place a license on probation if, after notice and opportunity for hearing in accordance with the provisions of chapter 621, RSMo, the board determines the licensee has:

(1) Made any false statement or given any false information in connection with an application for a license or a renewal or reinstatement thereof;

(2) Violated any provisions of sections 324.930 to 324.965;

(3) Violated any rule of the board adopted pursuant to the authority

contained in sections 324.930 to 324.965;

(4) Been convicted of a felony or been convicted of a crime involving moral turpitude;

(5) Impersonated, or permitted or aided and abetted an employee to impersonate, a law enforcement officer or employee of the United States, or of any state or political subdivision;

(6) Committed or permitted any employee to commit any act while the license was expired that could be cause for the suspension or revocation of any license, or grounds for the denial of an application for a license;

(7) Knowingly violated, or advised, encouraged, or assisted the violation of any court order or injunction in the course of business as a licensee;

(8) Used any letterhead, advertisement, or other printed matter or in any manner representing that such person is an instrumentality of the federal or state government or any political subdivision of a federal or state government;

(9) Used a name different from that under which such person is currently licensed in any advertisement, solicitation, or contact for business; or

(10) Committed any act that is grounds for denial of an application for a license pursuant to the provisions of sections 324.930 to 324.965.

2. Any person whose license status is affected by any official action of the state fire marshal or board of licensed private fire investigator examiners, including, but not limited to, revocation, suspension, failure to renew a license, or refusal to grant a license, may seek a determination by the administrative hearing commission pursuant to the provisions of section 621.045, RSMo. After the filing of a complaint before the administrative hearing commission, the proceedings shall be conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing commission that the grounds, provided in subsection 1 of this section, for disciplinary action are met, the board may singly or in combination censure or place the person named in the complaint on probation on such terms and conditions as the board deems appropriate for a period not to exceed five years or may suspend, for a period not to exceed three years, or revoke the license.

3. A licensed private fire investigator agency may continue under the direction of another employee if the individual holding the license is suspended or revoked as approved by the board. The board shall establish a time from within which the licensed private fire investigator agency shall identify an acceptable person who is qualified to assume control of the agency as required by the board.

324.957. 1. For the purpose of enforcing the provisions of sections 324.930 to 324.965, or in making investigations relating to any violation thereof or to the

character, competency, or integrity of the applicants or licensees, or for the purpose of investigating the business, business practices, or business methods of any applicant or licensee, or of the officers, directors, partners, or associates thereof, the board shall have the power to subpoena and bring before the board any person in this state and require the production of any books, records, or papers that the board deems relative to the inquiry. A subpoena issued pursuant to this section shall be governed by this state's rules of civil procedure.

2. Any person subpoenaed who fails to obey such subpoena without reasonable cause or who without such cause refuses to be examined or to answer any legal or pertinent question as to the character or qualifications of such applicant or licensee or such applicant's or licensee's business, business practices, or methods or such violations shall be guilty of a class A misdemeanor.

3. The board may administer an oath and take the testimony of any person, or cause such person's deposition to be taken, except that any applicant or licensee or officer, director, partner, or associate thereof shall not be entitled to any fees or mileage. The testimony of witnesses in any investigative proceeding shall be under oath and willful. False swearing in such proceeding shall be perjury.

324.960. 1. The board shall adopt such rules and regulations as may be necessary to carry out the provisions of sections 324.930 to 324.965.

2. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2004, shall be invalid and void.

324.965. Any person who knowingly falsifies the fingerprints or photographs or other information requested to be submitted pursuant to sections 324.930 to 324.965 is guilty of a class D felony. Any person who violates any other provisions of sections 324.930 to 324.965 is guilty of a class A misdemeanor.