

Approved: February 10, 1998
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Garry Boston at 1:30 p.m. on February 3, 1998 in Room 519-S of the Capitol.

All members were present except: Representative Annie Kuether, Excused
Representative Steve Lloyd, Excused

Committee staff present: Mary Galligan, Legislative Research Department
Jill Wolters, Revisor of Statutes
June Evans, Committee Secretary

Conferees appearing before the committee: William A. Sanders, Pres., Kansas Assn. of Private Detectives
John Ellis, Secretary, Kansas Assn. of Private Detectives
Mike Galbreth, V. P., Kansas Assn. of Private Detectives
Camille Nohe, Assistant Attorney General

Others attending: See attached list

The Chairman opened the meeting and asked if there were any bill introductions.

Representative Tanner moved and Representative Swenson seconded to introduce legislation on concealed carry just as the committee report came out of committee last year. The motion carried.

Representative Ruff moved and Representative Crow seconded to introduce a bill concerning electronic fund transfer. The motion carried.

The Chairman opened the hearing on HB 2487.

HB 2487 - Amendments to the private detective licensing act.

Jill Wolters, Revisor of Statutes Office, gave a briefing on HB 2487.

William A. Sanders, President of the Kansas Association of Private Investigators, testified as a proponent to HB 2487, stated that he was the owner of a private detective agency and an alarm system company based in Paola, Kansas. As president of KAPI he represents approximately 60 members statewide. A statewide effort has been undertaken by private detectives for the past five years to amend the existing Private Detective Licensing Act. Mr. Sanders stated the existing Private Detective Licensing Act needs to be amended. The amendment is a housekeeping necessity to update an antiquated Private Detective Act with 21st century language and actions for the protection of the citizens of Kansas and the private detectives it governs. KAPI encourages the following revisions: (1) The size of increase in licensing fees, and the budgetary control or oversight of the fees collected, (2) The creation of a Firearms and Training Review Board for private detectives, (3) The regulatory agency's access to records held by Private Detectives and (4) The use of a badge by private detectives licensed to carry a firearm. (Attachment 1)

John Ellis, Kansas Association of Private Investigators, testified as a proponent to HB 2487, and outlined the amendments proposed by the Kansas Association of Private Investigators to the Private Detective Licensing Act. (Attachment 2)

Mike Galbreath, Vice President of Kansas Association of Private Investigators, stated he was the President of Agency Enforcement, Inc., a private investigative firm in Greater Kansas City. Mr. Galbreath's stated Kansas has a reasonable law regarding the practice of being a private investigator. There is room for improvement and it is felt our recommendations would be a step in the right direction. The present bill does not require any educational background or experience in the industry and an education program and an on-the-job training program which would allow new people is recommended. A firearms identification badge is illegal under current law and it is recommended as it is felt a badge would provide safety of the detectives. A temporary 72 hour license to an out-of-state licensed detective is needed to bring in expertise when needed. A license to carry shotguns and pistol-caliber carbines is needed due to some of the changes in the industry. (Attachment 3)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE FEDERAL AND STATE AFFAIRS, Room 519-S
Statehouse, at 1:30 p.m. on February 3, 1998.

Camille Nohe, Assistant Attorney General, testified as an opponent to HB 2487, stating many provisions mirrored the proposed amendments in SB 322. There are some significant differences between the two bills. HB 2487 would create a negative administrative burden and fiscal impact on the office of the Attorney General.

The Attorney General is opposed because of the following: (1) A private detective fee fund is not established, (2) License, permit and certificate fees are not increased, (3) A temporary private detective license is established with a fee of \$20 which would be credited toward the permanent private detective license fee. For persons employed by a private detective agency the license fee is only \$18. Under this bill, the Attorney General would thus need to refund \$2 when the permanent license was issued, (4) A conditional private detective license is established allowing a person to work as an "intern" when the person does not meet the private detective license requirements. This would allow unlicensed persons to engage in detective business indefinitely without a license, (5) A new firearm and training review board is established "to assist with actions pertaining to firearm permits, training and use of force," (6) All administrative rules and regulations adopted by the Attorney General in her implementation of this licensing program would automatically be revoked under this bill, (7) Private detectives who hold a concealed weapon permit would be granted the authority to carry a badge. (Attachment 4)

The Chairman closed the hearing on HB2487.

Representative Sharp moved and Representative Tanner seconded to approve the minutes of January 27 and 29. The motion carried.

The meeting adjourned at 3:10 p.m.

The next meeting is scheduled for February 4, 1998.

FEDERAL & STATE AFFAIRS COMMITTEE

DATE: February 3, 1998

NAME	REPRESENTING
IRA H. HARKLEY	SELF
MIKE C. GALBREATH	K.A.P.I.
JOHN W. ELLIS	KS ASSN OF PRIVATE INVESTIGATORS
Bill SANDERS	KAP I
Camille Nohr	Attorney General Paula Stewart
Barbara Bunting	self
Debbie Thompson	self
DON SNODGRASS	KS Foot Dealers Assn
Neil Kueser	Kansas Farm Bureau
Debbie Kueser	Kansas Farm Bureau
Clyde Packer	Kansas Farm Bureau

SPI & ASSOCIATES
A PRIVATE INVESTIGATIVE AGENCY

February 3, 1998

House Federal & State Affairs Committee Hearing,
Kansas State Capital, Building Room 519 @ 1:30pm.

Re: House Bill 2487

Honorable Chairman: Garry Boston;
Distinguished Legislators of this Committee;

I am William A. Sanders, President of the Kansas Association of Private Investigators, "KAPI" (for short). I am the owner of a Private Detective Agency, and a Alarm System Company, based in Paola, Kansas. As President of KAPI, I represent approximately 60 members state wide, most of whom are either Kansas residents, or Private Detectives or both. Our membership comprises a wide range of diversified professionals, whose education, and professional experience vary. The services provided by our members as a whole cover virtually every facet of the Private Security industry. This organization was formed by individuals who established high ethical standards for themselves, and who want to insure that the people who operate within this industry carry with them these same standards of professional ethics and services to the public.

Our legislative committee monitors the state legislative and regulatory actions affecting our industry. For the past five years, a state wide effort has been undertaken by the Private Detectives operating in the state to amend the existing Private Detective Licensing Act.

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Many people have provided input into this process, including Private Detectives who are not members of KAPI. This effort produced a considerable amount of, but not complete, agreement among the participants. Results were presented to the Office of the Attorney General as the regulating agency, who also was interested in substantial revisions to the Private Detective Licensing Act. The regulating agency did not agree with all of the proposals made by Private Detectives, and after an abortive attempt to pass jointly approved action before the legislature in 1995, a series of meetings and letters occurred in 1996 to attempt resolution of the differences. This produced considerable agreement between the Office of the Attorney General and the Private Detective representatives involved even after strongly argued, somewhat contentious exchanges. In the end, we deadlocked over four issues on which agreement could not be reached by any compromise. The four issues which deadlocked the negotiations in 1996 are considered important by KAPI; two are considered critical. It is clear that as much agreement as possible has been reached, as can be achieved by negotiation between the Private Detectives and the Office of the Attorney General. It is also clear that the existing Private Detective Licensing Act needs to be amended.

This amendment is a housekeeping necessity, to update an antiquated Private Detective Act, with 21st Century language and actions, for the protection of the citizens of Kansas, and the Private Detectives it governs. In many cases, we are the last bastion of help the private citizen has left to reach out for after exhausting all other means of public services available to them. A Private Detective fills these gaps left by law enforcement agencies, and we should be entitled to regulations governing us that are consistent with existing statutes, and not in violation of our constitutional rights. In short we need clear, fair, modern day legislation as it applies to our profession.

This Bill has been crafted for the purpose of promoting a better understanding and working relationship with both the Attorney General and the KBI. The work expended over the past five years should not be lost. KAPI would encourage the legislature to initiate this complete revision, and simply decide the final four issues which are:

1. The size of increase in licensing fees, and the budgetary control or oversight of the fees collected.
2. The creation of a Firearms and Training Review Board for Private Detectives.
3. The regulatory agency's access to records held by Private Detectives. (This is the section which conflicts with other statutes).
4. The use of a badge by Private Detectives licensed to carry a firearm. (Viewed as a safety issue by the Private Detectives).

House Bill 2487 is written to support the view of the Kansas Association of Private Investigators on these issues with the exception of the fee increase. KAPI left the fees in HB 2487 at the same level as they currently exist in the licensing act. After consultation with other Private Detective organizations who are now prepared to support this bill, we would recommend that a fee increase be based on the rise in the consumer price index since the bill was enacted. We feel that in this hearing today, the remaining issues can be outlined to the committee, so that appropriate action could be taken with rather minor expenditure of time. KAPI believes that it is in the best interests of everyone to resolve these problems in this session.

I will at this time , turn over the lectern to our KAPI Secretary, Mr. John Ellis, who has authored this House Bill 2487, and who will present the outline of it in detail for you. Are there any questions from the committee before I turn it over to John.

Thank you for the time you have given me to address you today.

William A. Sanders
President
Kansas Association of Private Investigators

15 ½ S. PEARL STREET *ON THE SQUARE* PAOLA, KANSAS 66071
913-294-4300 800-819-9194 FAX 913-557-4344

1.

KANSAS ASSOCIATION OF PRIVATE INVESTIGATORS



HB 2487

Amends Private Detective Licensing Act

John W. Ellis, B.S., M.A.J.
Secretary, K.A.P.I.
Licensed Private Detective
Certified Firearm Instructor

2.

HISTORICAL OVERVIEW

PRIVATE DETECTIVE LICENSING

- 1960s - Unregulated by State
- Enacted in 1970s
- Last Amended in early 1980s
- 1988 - Attorney General initiated an attempts to change procedures and amend act - stalls
- 1994 - 1996 Meetings among Private Detectives & Private Detectives and Attorney General Office
 - Bills introduced; do not go forward
- 1997 - HB 2487 Introduced by KAPI;
 - SB 322 Introduced by AG and AD Hoc Group of Private Detectives
 - HB 2267 Introduced on Behalf of Private Citizen

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CURRENT PROBLEMS

Private Detective Industry

- ▶ Conflicting Statutory Requirements
 - ▶ Privacy provisions - Open records, Social Security, etc.
 - ▶ Federal and State Credit/Collection Acts
 - ▶ Federal Polygraph Act
- ▶ Impact of Increasing Technology
 - ▶ ATMs - plain clothes security
 - ▶ Personal Security - plain clothes
 - ▶ Information Access - Affects demand/cost
- ▶ Lack of Training Facilities in State
 - ▶ KLETC - not available to private detectives
 - ▶ Universities - no curriculum; limited classes
 - ▶ Technical schools - none
- ▶ Increasing Municipal Ordinances on Firearms
- ▶ Lack of Professional Liability Insurance from a company regulated by the Kansas Insurance Commissioner

Kansas Association of Private Investigators 3 Feb 98

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STATUTE CONFLICT

HB 2487

- ▶ Records Access
 - ▶ Page 14, Line 30
 - ▶ Administrative subpoena power not court order
 - ▶ Law Enforcement Investigation not a court order
 - ▶ Conflicts with:
 - ▶ Federal Fair Credit Reporting Act
 - ▶ Federal Debt Collection Practices Acts
 - ▶ Federal Social Security Act
 - ▶ Federal Employee Polygraph Protection Act
 - ▶ Kansas Fair Credit Act
 - ▶ Administrative Law Case Precedents Do Not Support This Access
 - ▶ Privileged Communications
- ▶ Motor Vehicle Licensing
 - ▶ Page 15, Line 30

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5,

FIREARM BOARD

HB 2487

- ▶ Establishes Firearm & Training Review Board
 - ▶ Voluntary; Designed to operate at no cost to state
 - ▶ Provides annual firearm standards & training input
 - ▶ May be used as a 'shooting review' board

- ▶ Shooting Review
 - ▶ Fulfills role of internal review in Law Enforcement Agency
 - ▶ Operates under authority of Attorney General
 - ▶ Operates within the time parameters of K.A.P.A.
 - ▶ Balances rights of regulator, regulated & public

- ▶ Future oriented
 - ▶ Preventive in nature
 - ▶ Historical use of firearms by Private Detectives

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6.

Firearms Related Items

HB 2487

- ▶ Permits Concealed Carry
 - ▶ Currently allowed by exemption in KSA 21-4201
 - ▶ Permitted - Page 16, Line 19
 - ▶ Definition - Page 4, Line 37

- ▶ Use of Firearm Permit Badge or Insignia
 - ▶ Safety Issue
 - ▶ Cost borne by individual
 - ▶ Amenable to design approval
 - ▶ Protections for misuse

- ▶ Carry of shotguns or carbines
 - ▶ ATM, Personal Security, Rural areas
 - ▶ Permitted - Page 17, Line 41
 - ▶ Definition - Page 4, Line 23

- ▶ Firearm Permit Under Attorney General Control
 - ▶ Page 18, Line 8
 - ▶ Clarifies the Application of Municipal Ordinances

- ▶ Qualification by Type Firearm and Action
 - ▶ Page 18, Line 2

Kansas Association of Private Investigators 3 Feb 98

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LICENSING FEES

HB 2487

- ▶ CURRENT
 - ▶ Agency/Independent - \$120
 - ▶ Individual - \$18
 - ▶ Firearm Permit - \$10
 - ▶ Firearm Trainer - \$25
- ▶ PROPOSED BY SB 322
 - ▶ Agency/Independent - \$400 for Two years
 - ▶ Individual - \$200 for Two years
 - ▶ Firearm Permit - \$100 for Two years
 - ▶ Firearm Trainer - \$200 for Two years
- ▶ K.A.P.I. RECOMMENDS:
 - ▶ RETAIN CONTROL OF FEES
 - ▶ Pay to General Fund not AG Fund
 - ▶ Adjustment of current fees based on C.P.I.
 - ▶ Approximately doubles current fees

Kansas Association of Private Investigators - 3 Feb 1998

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OTHER CHANGES

HB 2487

- ▶ **On-the-Job Training; Interns**
 - ▶ Defined - Page 4, Line 19
 - ▶ Allowed - Page 8, Line 16
- ▶ **Limited, Conditional or Temporary Licenses**
 - ▶ Page 12, Line 13
 - ▶ Page 8, Line 12
- ▶ **Specifies the License Classifications**
 - ▶ Page 6, Line 4
 - ▶ Currently in use
- ▶ **Specifies the Disqualifying Minor Offenses in Background Check**
 - ▶ Page 13, Line 3;
- ▶ **Definitions, Exemptions and Other Wording**
 - ▶ Clarifies meaning for regulatory use

Kansas Association of Private Investigators 3 Feb 98

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KANSAS ASSOCIATION OF PRIVATE INVESTIGATORS

P.O. Box 2111

Overland Park, KS 66201-1111

Bill Sanders, President, 913-294-4300

John Ellis, Secretary, 913-362-2017



Legislative Synopsis

H.B. 2487

Amendment to the Private Detective Licensing Act K.S.A. 75-7b

11 January 1998

The amendments proposed by the Kansas Association of Private Investigators to the Private Detective Licensing Act accomplish the following:

Remove statutory conflicts:

1. Records Access.

a. Current sections of the **Private Detective Licensing Act** impose records access requirements under penalty for non-compliance. These sections are:

(1) K.S.A. 75-7b08(a) requires a private detective to divulge any information in his possession to the Attorney General, any Law Enforcement Officer, any County Attorney or their representative.

(2) K.S.A. 75-7b15(a) requires that a private detective allow free and full opportunity for inspection of records by the attorney general.

(3) K.S.A. 75-7b15(b) authorizes the attorney general to issue an administrative subpoena for records.

b. The **Federal Fair Credit Reporting Act and the Kansas Fair Credit Act** impose conflicting requirements. The appropriate citations and requirements are:

(1) 15 U.S.C. 1681a. and K.S.A. 50-702 establish definitions which make it clear that certain records held by private detectives are subject to these credit act restrictions.

(2) 15 U.S.C. 1681b., 1861f. and K.S.A. 50-703 establish permissible uses of these records, limiting them to release by the private detectives only in compliance with court orders or for employment, insurance, credit or licensing actions concerning the person to whom the record pertains.

(3) 15 U.S.C. 1681n., 1681o., K.S.A. 50-715 and 50-716 impose civil penalties on the private detectives for non-compliance.

(4) 15 U.S.C. 1681t. clearly states that where the state law conflicts with the requirements of the federal act, the federal law prevails and must be followed.

c. The **Federal Debt Collection Practices Act** imposes conflicting requirements. The appropriate citations and requirements are:

(1) 15 U.S.C. 1692c. prohibits communication of information gathered in a debt collection to third parties unless a court order is presented.

(2) 15 U.S.C. 1692k. imposes civil penalties for non-compliance by the private detective.

(3) 15 U.S.C. 1692n. And 1692o. clearly states that where the state law conflicts with the requirements of the federal act, the federal law prevails and must be followed.

d. The **Federal Employee Polygraph Protection Act** imposes conflicting requirements. The appropriate citations and requirements are:

(1) 29 U.S.C. 2008 prohibits release of the test results to a third party unless a court order is presented.

(2) 29 U.S.C. 2005 imposes civil penalties for non-compliance.

(3) Kansas Attorney General Opinion # States that a polygraph test administered for private purposes in Kansas must be administered by a licensed private detective.

2. **Motor Vehicle Licensing.**

K.S.A. 75-7b16 requires that any motor vehicle used by a private detective must be registered in Kansas. This conflicts with licensing requirements for motor vehicles from another state and has been ruled invalid in a Kansas Administrative Hearing.

Private Detective Firearm Permit Requirements

1. Allows private detectives with a valid firearm permit to utilize a **badge for safety**.
2. Establishes a **Firearm and Training Review Board for Private Detective** firearm use.
3. Corrects a statutory citation in the existing statute.
4. Modifies the type of firearms that may be carried by private detectives to meet changing public demand.
5. Clarifies the application of municipal laws to firearm carriage by private detectives.

Entry level employees.

1. Allows issuance of **temporary licenses** for responsiveness to the public.
2. Allows **intern licensing** to overcome the current lack of education and training for private detectives within the state.

Administrative changes.

1. Clarifies certain definitions to assist with their interpretation and application for regulatory purposes and to update the act in the changing business environment.
2. Allows fingerprints to be used for background checks with the KBI and FBI.

COMPARISON
1997-1998 Session Bills
to amend
PRIVATE DETECTIVE LICENSING ACT
K.S.A. 75-7b

Section	SB 322	HB 2487	HB 2267
7b01	<i>Amends definitions:</i> Detective business Law enforcement officer Organization Firearm Permit	<i>Amends definitions:</i> Detective business Law enforcement officer Organization Firearm Permit <i>Adds definitions:</i> Good moral character Citizen Independent Claims adjuster Operative Intern Pistol-caliber carbine	No change
7b02	<i>No change:</i>	<i>Amends wording for:</i> Application to LEO	<i>No change</i>
7b03	<i>Amends exemptions for:</i> Employers Financial-credit businesses Attorneys & law firms Private patrol operators	<i>Amends exemptions for:</i> Employers Financial-credit businesses Attorneys & law firms Claims adjusters Private patrol operators <i>Adds exemptions for:</i> Operatives Out-of-state licensees Market researchers	No change

7b04

Amends applicant requirements for:
Address
Business owners, etc
Photographs & fingerprints
Employment history
Personal references
Criminal history screening
Administrative hearing

Adds:

Authority to screen applicants for limited, conditioned or censured licenses

Authority for application fee

Amends applicant requirements for:
Address
Business owners, etc.
Photographs & fingerprints
Employment history
Personal references
Criminal history screening

Adds:

Identification of license classifications currently in use by regulating agency;

Language requirement;

Competency limitation;

Authority for issuance of 120 day temporary license;

Authority for intern license;

Authority to screen applicants for limited, conditioned or censured licenses

Authority for application fee

Removes:

General statements for additional qualifications

Authority to deny applicant license for conduct of others

Amends applicant requirements for:

Personal references

Comparison of 1997 Session Bills amending Private Detective Licensing Act
 Section SB 322 HB 2487

HB 2267

7b05	<i>Amends fee rate and frequency:</i> 2 year licenses Agency - \$400 Owner/Officer - \$200 Individual - \$400	<i>Amends fee assessment to match classifications:</i> Retains 1 year license Agency/Independent - \$120 Owner/Officer - \$18 Individual - \$18 <i>Adds:</i> Standardizes license number	No change
7b06	<i>No change</i>	<i>Amends notification requirement for:</i> Change of address Loss of identification	<i>No change</i>
7b07	<i>Amends:</i> Licensing period <i>Removes:</i> Licensee responsibility for employees	<i>Amends:</i> Renewal administrative requirements Photograph requirement <i>Removes:</i> General statement on rules <i>Adds:</i> Limitation on licensee responsibility for employee conduct	<i>No change</i>
7b08	<i>Amends:</i> Disclosure requirement False report limitation Official impersonation clause Entry restriction for private property Clarifies evidence restriction <i>Removes:</i> Contingency fees	<i>Amends:</i> Disclosure requirement False report limitation Written report requirement Limitation on badge use Official impersonation clause Limitation on use of alias Entry restriction for private property Clarifies evidence restriction	<i>No change</i>

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Comparison of 1997 Session Bills amending Private Detective Licensing Act
 Section SB 322 HB 2487

HB 2267

7b09	<i>No change</i>	<i>Amends:</i> Agency and employee record requirements	<i>No change</i>
7b10	<i>Amends:</i> Advertisement limits	<i>Amends:</i> Advertisement limits <i>Removes:</i> Branch office certificates	<i>No change</i>
7b11	<i>Amends:</i> Insurance coverage language Insurance & bond amount to \$100,000	<i>Amends:</i> Insurance coverage language [Retains \$10,000]	<i>No change</i>
7b12	<i>No change</i>	<i>No change</i>	<i>No change</i>
7b13	<i>Amends:</i> Criminal conviction limits for licensees Authority to regulate licensee conduct	<i>Amends:</i> Criminal conviction limits for licensees; Clarifies meaning of limited activity on behalf of an attorney Authority to regulate licensee conduct <i>Removes:</i> Authority to regulate business contracts; Redundant statement	<i>No change</i>
7b14	<i>Amends:</i> Authority to regulate licensee conduct Advertising restriction Evidence restriction	<i>Amends</i> Authority to regulate licensee conduct Advertising restriction Evidence restriction	<i>No change</i>

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Comparison of 1997 Session Bills amending Private Detective Licensing Act
 Section SB 322 HB 2487

HB 2267

7b15	<i>Amends:</i> Records access	<i>Amends:</i> Records requirement Records access <i>Adds:</i> Limitation on regulating agency access to private records held by licensee	<i>No change</i>
7b16	<i>Repeals</i>	<i>Amends</i> Changes motor vehicle requirement to accord with current law	<i>No change</i>
7b17	<i>Amends</i> Authority to carry firearm Statute citation Permit display requirement Authority to revoke permit Permit fee - \$100 biannual <i>Adds:</i> 24 hour carry provision 2 year license period	<i>Amends</i> Requirement to 'demonstrate' need; Statute citation Photograph & fingerprint requirement; Permit display requirement Firearm Discharge report requirement; Authority to revoke permit [Retains \$10 annual fee] <i>Adds:</i> Authority to carry firearm permit badge for safety; Limitations for competency, abuse or addictions Authority to issue permit for shotguns or carbines Clarifies basic qualification standards for firearms;	<i>No change</i>

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Comparison of 1997 Session Bills amending Private Detective Licensing Act
 Section SB 322 HB 2487

HB 2267

7b18	<i>No change</i>	<p><i>Amends:</i> Clearly includes firearm permits under regulatory agency; Limits on rules & regulations adoption;</p> <p><i>Repeals:</i> Existing Rules and Regulations for licensees</p>	<i>No change</i>
7b19	<i>No change</i>	<i>Amends:</i> Penalty language	<i>No change</i>
7b20	<i>No change</i>	<p><i>Amends:</i> Written exam requirement Background check requirement</p> <p><i>Deletes:</i> Oral interview requirement</p>	<i>No change</i>
7b21	<p><i>Amends:</i> Firearm trainer certification requirements; Fee - \$200 biennial</p>	<p><i>Amends:</i> Firearm trainer certification requirements [Retains \$25 annual fee]</p>	<i>No change</i>
New	Establishes fee fund for direct attorney general control of funds	<p>Establishes Firearm & Training Review Board for licensed Private Detectives - Reviews training annually May review use of force incident by Private Detective</p>	<i>None</i>

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AGENCY ENFORCEMENT, INC.



February 3, 1998

Members
House Federal and State Affairs Committee

Addressing House Bill 2487

My name is Mike Galbreath, Vice President of Kansas Association of Private Investigators. I am the President of Agency Enforcement, Inc., a private investigative firm in Greater Kansas City. My first brush with this industry was as an employee of the Federal Government as an agent in covert operations. I left that to become a police officer in San Diego. After thirteen years in California, I moved back to Kansas in order to be closer to family. Agency Enforcement currently operates in this country and in Mexico. Next month, we will be negotiating with agencies in Ireland, Scotland and Canada to cover those areas also.

My concern in this bill has come about through my intense interest in helping to create a more positive perception of the industry by the general public. Movies and television are not the only reason for a poor perception of private investigators. A big reason is caused by the actions or non-action of members of the profession.

Kansas has a reasonable law regarding the practice of being a private investigator. As with everything, there is room for improvement. I feel our presentation will offer a degree of that improvement. It will not make it perfect, but will provide a step in the right direction and a firmer base for future legislation.

I would like to address certain portions of the changes and the reasons for our desire to change the bill.

Section 2, (P), Intern Program. There currently is no way for a person to enter this profession. The requirements of the present bill don't demand any educational background or experience in the industry. We would like to be able to formulate an educational program and an on-the-job training program which would allow new people to enter the industry in a professional manner.

Additionally, we would like to see a requirement of minimal educational background and a requirement for continuing educational credits and that these items become a condition of licensing.

Section 17, (i), firearms identification badge. I understand, to a degree, the reason for not allowing a badge. The feeling seems to be that it could be used to impersonate a commissioned officer. This is already covered and is illegal under the current law. Our

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concern is for our safety. I know from personal experience as a police officer that when I approached a scene with a non-uniformed person holding a gun on another person, my attention was focused on the person with the gun. If he holds up a card or a piece of paper to prove his right to have a firearm, I still felt the danger while having to approach the person with the gun in order to retrieve the item to read. If I had that person drop the gun, someone else could get it before I did. It is unsafe for all present.

As a private investigator with a license to carry a gun, I am on the other side. How do I know if the police officer is not going to shoot first and ask questions later. I am now the one the officer is pointing the gun at. Do I reach in my pocket and pull out my license, a business card size document with my picture? If I were the officer, again, my attention would be toward the person with the gun, not the person who is the problem and at that point could cause the officer a problem. I also know of this side of the problem first hand. Under the current system, there will be a problem. It's only a matter of time. I would like to see a bill that would do everything possible to circumvent that occurrence.

Section 4, (m), Temporary license. There are incidents in our business that we have to bring in an expert, or just another trained person into Kansas from another state to fulfill the requirements of our clients. Offering a 72 hours temporary license to a person licensed in another state to work in Kansas as needed will solve this problem.

Section 17, (k), License to carry shotguns and pistol-caliber carbines. This is needed due to some of the changes in our industry. We are getting more involved in ATM security, as one example. No doubt you are aware of the private investigator killed in the Kansas City area last year. We, along with most law enforcement agencies are simply out gunned by the bad guys. We ask for this change for our safety and the safety of the public.

I thank you for you time and your patience.

Sincerely,



Mike C. Galbreath



State of Kansas

Office of the Attorney General

301 S.W. 10TH AVENUE, TOPEKA 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

February 3, 1998

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**Before the House Committee on Federal and State Affairs
Re: House Bill 2487**

**Testimony on Behalf of Attorney General Carla Stovall
Presented by Assistant Attorney General Camille Nohe**

Thank you for this opportunity to testify in opposition to House Bill 2487. Many of the provisions in HB 2487 mirror proposed amendments in SB 322 which the Attorney General will testify in support of to the Senate Committee on Federal and State Affairs two days from now. However there are some significant differences between the two bills. HB 22487 would create a negative administrative burden and fiscal impact on the office of the Attorney General. The Attorney General is opposed to HB 2487 because, unlike the Attorney Generals proposed amendments:

- (1) A private detective fee fund is not established. All license, permit and certificate fees would continue to go to the general fund and thus would continue to be unavailable for use by the Attorney General in the administration and enforcement of this licensing program.
- (2) License, permit and certificate fees are not increased. Consequently, even if a private detective fee fund were established, there still would not be sufficient funds to cover the cost of implementing and enforcing the licensing program.
- (3) A temporary private detective license is established with a fee of \$20 which would be credited toward the permanent private detective license fee. For persons employed by a private detective agency, the license fee is only \$18. Under this bill, the Attorney General would thus need to refund \$2 when the permanent license is issued. The effect is to create a greater administrative burden which would require a corresponding fiscal note.
- (4) A conditional private detective license is established allowing a person to work as an "intern" when the person does not meet the private detective license requirements. This would allow unlicensed persons to engage in detective business indefinitely without a license. In addition, no fee is set for a conditional license. Thus again, the effect would be a greater administrative burden.
- (5) A new firearm and training review board is established "to assist with actions pertaining to

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firearm permits, training and use of force.” The Attorney General does not see a need for such a review board, and again, the effect would be a greater administrative and fiscal burden on the office of the Attorney General.

(6) All administrative rules and regulations adopted by the Attorney General in her implementation of this licensing program would automatically be revoked under this bill.

(7) Private detectives who hold a concealed weapon permit would be granted the authority to carry a badge. The Attorney General firmly believes that law enforcement officers should remain the only persons authorized to carry a badge.

Numerous other problematic provisions appear in HB 2487, e.g. an exemption for operatives engaged in undercover work for a "limited" time period or purpose, and deletion of the disciplinary ground of failing or refusing to render services or a report to a client as agreed. These types of provisions make it appear that the proponents want the benefits of state licensure without corresponding regulation designed to protect the public.

For 25 years the Attorney General has been charged with the responsibility of administering and enforcing the Private Detective Licensing Act without directly receiving any of the monies collected for license, permit and certificate fees. The changes contained in HB 2487 would create additional administrative and fiscal burdens on the office of the Attorney General without any consideration of ways in which the fiscal impact can be addressed. The Attorney General is committed to carrying out her statutory charge in a responsible manner. The passage of HB 2487 would increase the difficulties in meeting this obligation in a manner which is fiscally responsible and consistent with good public policy. For these reasons, the Attorney General respectfully requests the Committee to oppose House Bill 2487.

Agency 16

Attorney General

Articles

- 16-1. PRIVATE DETECTIVES AND AGENCIES. (Not in active use)
- 16-2. DEFINITIONS.
- 16-3. APPLICATIONS FOR PRIVATE DETECTIVE LICENSE.
- 16-4. HEARINGS.
- 16-5. FIREARM TRAINERS.
- 16-6. FIREARM PERMITS.
- 16-7. CRIME VICTIMS ASSISTANCE GRANTS.

Article 1.—PRIVATE DETECTIVES AND AGENCIES

16-1-1 to 16-1-6. (Authorized by K.S.A. 75-7b18(b); effective, E-77-23, May 1, 1976; effective Feb. 15, 1977; revoked May 1, 1982.)

Article 2.—DEFINITIONS

16-2-1. Definitions. (a) "License" means a certificate and card, issued by the attorney general upon proper application, testing and approval, authorizing a person to engage in Kansas in the detective business as a private detective or private detective agency.

(b) "Firearms trainer" means a person certified by the attorney general to train private detective applicants for a firearm permit in the handling of firearms and the lawful use of force.

(c) (1) "Special commission" means any type of identification issued by a law enforcement agency or law enforcement officer which grants any temporary or permanent law enforcement authority, including:

- (A) deputy;
- (B) special deputy;
- (C) special assistant;
- (D) reserve officer; or
- (E) special officer.

(2) A special commission shall not include a commission issued by a law enforcement agency which identifies the holder as a private detective or private security officer, or as a retired or honorary law enforcement officer but does not grant any law enforcement authority.

(d) "Capper" or "runner" means a person acting on behalf of an attorney who coordinates a staged automobile accident or acts as a decoy or

lure for the purpose of swindling or any other fraudulent purpose.

(e) "Associates" means persons who share ownership of a private detective agency which is not incorporated or established as a legal partnership.

(f) "Law enforcement officer" means any person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes. (Authorized by K.S.A. 75-7b18; implementing K.S.A. 75-7b01; effective May 1, 1982; amended April 12, 1996.)

Article 3.—APPLICATIONS FOR PRIVATE DETECTIVE LICENSE

16-3-1. Procedure. (a) An applicant for a private detective license or a private detective agency license shall be required to appear at a time and location designated by the attorney general for a written examination and oral interview.

(b) An applicant who fails to pass the written examination may retake the examination two times at a scheduled examination date.

(1) The first re-examination must occur within 30 days after notice of the results of the original exam is provided to the applicant.

(2) A second re-examination must occur within 30 days after notice of the results of the first re-examination is provided to the applicant.

(3) An applicant who does not successfully pass the examination after three attempts shall be denied a license to engage in detective business.

(c) An applicant denied a license as a private detective or detective agency for failure to pass the written examination within three attempts

shall not make application under the provisions of the Kansas Private Detective Licensing Act within 12 months following the denial of the license.

(d) The certificates of approval submitted by an applicant for a private detective license or a private detective agency license shall be dated within four months of the date the application is received by the attorney general.

(e) An applicant for a private detective license or a private detective agency license shall provide information concerning discharge from the United States military service in relation to the applicant and any officer, director, partner or associate of the applicant. (Authorized by K.S.A. 75-7b18; implementing K.S.A. 75-7b04 and K.S.A. 75-7b20; effective May 1, 1982; amended Feb. 13, 1995.)

16-3-2. Renewal. (a) An applicant for renewal of a private detective license or a private detective agency license shall provide verification of a surety bond, insurance or deposit as required by K.S.A. 75-7b11 and amendments thereto.

(b) An applicant for renewal of a private detective license or a private detective agency license shall provide information as requested in the renewal application which pertains to acts and conduct prohibited by K.S.A. 75-7b08 and K.S.A. 75-7b13 and amendments thereto. (Authorized by K.S.A. 75-7b18; implementing K.S.A. 75-7b07; effective May 1, 1982; amended Feb. 13, 1995.)

16-3-3. Additional qualifications for private detectives. In addition to the qualifications established in K.S.A. 75-7b04 and amendments thereto, an applicant for a private detective license or a private detective agency license shall:

(a) be a high school graduate or have earned a graduate equivalency degree;

(b) not be incompetent, incapacitated or impaired by reason of mental condition, deficiency or disease; and

(c) not evidence current addiction to, dependence on or abuse of alcohol or a controlled substance as defined in K.S.A. 65-4101 and amendments thereto. Such evidence may include, but is not limited to conviction of any crime involving the possession, use, consumption or self-administration of alcohol or any controlled substance as defined in K.S.A. 65-4101 and amendments thereto. (Authorized by K.S.A. 75-7b04 and K.S.A. 75-7b18; implementing K.S.A. 75-7b04; effective Feb. 13, 1995.)

Article 4.—HEARINGS

16-4-1. (Authorized by K.S.A. 75-7b18; implementing K.S.A. 75-7b15; effective May 1, 1982, revoked Feb. 13, 1995.)

Article 5.—FIREARM TRAINERS

16-5-1. Individuals deemed personally qualified and knowledgeable. (a) An applicant for a firearm trainer certificate shall be considered personally qualified to train private detectives in the handling of firearms upon successful completion of approved firearms training:

(1) within two years prior to application for a firearm trainer certificate; or

(2) within five years prior to application for a firearm trainer certificate if the applicant has also had subsequent experience training persons in the handling of firearms within two years prior to application.

(b) Training shall be approved if the applicant for a firearm trainer certificate successfully completed a minimum of 40 clock hours of education and training through any combination of law enforcement, military or private firearm courses which included education and training in:

(1) weapons fundamentals and safety;

(2) marksmanship fundamentals and safety procedures;

(3) instruction in daylight, dim light and darkness shooting;

(4) care, cleaning and maintenance of weapon;

(5) instruction in basic weapon retention and disarming techniques;

(6) shooting proficiency demonstrated with a firearm; and

(7) teaching or instructing abilities.

(c) An applicant for a firearm trainer certificate shall provide verification of the successful completion of approved firearm training by providing:

(1) a copy of the original certificate of completion of the course or courses; and

(2) either a copy of the training course agenda, a statement from the course instructor or instructors, or an affidavit from the applicant which verifies the education and training requirements.

(d) An applicant for a firearm trainer certificate shall be considered personally qualified to train private detectives in the lawful use of force upon verification of successful completion of 10 clock hours of formal classroom or course instruction on the lawful use of force.

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firearm trainer certificate is a person of good character and reputation, an applicant shall:

- (1) be licensed as a private detective; or
- (2) (A) provide affidavits from five or more reputable citizens who have known the applicant for a period of at least five years and who are not related to the applicant by blood or marriage attesting that the applicant is a person of good moral character and reputation; and

(B) provide one classifiable set of the applicant's fingerprints which shall be submitted to the Kansas bureau of investigation and may be submitted to the federal bureau of investigation for a fingerprint check to determine any criminal history of the applicant. (Authorized by K.S.A. 75-7b18; implementing K.S.A. 75-7b21; effective May 1, 1982; amended April 12, 1996.)

16-5-2. (Authorized by K.S.A. 75-7b18; implementing K.S.A. 1981 Supp. 75-7b21; effective May 1, 1982; revoked Feb. 13, 1995.)

16-5-3. (Authorized by K.S.A. 75-7b18; implementing K.S.A. 1981 Supp. 75-7b21; effective May 1, 1982; revoked Feb. 13, 1995.)

16-5-4. Plan of operation of training. (a) Each applicant for a firearm trainer certificate shall submit a proposed plan of operation for training private detectives in the handling of firearms and the lawful use of force to the attorney general for approval.

(1) The plan of operation shall be tailored to private detective business and be sufficiently detailed to enable the attorney general to evaluate the content of the plan.

(2) The applicant shall include a descriptive list of all materials and aids proposed to be used in the training and instruction.

(3) For an applicant for an initial firearm permit the plan of operation shall consist of a minimum of 16 clock hours of education and training.

(4) For an applicant for renewal of a firearm certificate the plan of operation shall consist of 8 clock hours of training and education.

(5) The plan of operation shall include the following:

(A) training and instruction which cover the following areas:

(i) instruction in lawful use of force by a private detective, including concepts of civil liability and criminal culpability;

(ii) weapons fundamentals and safety;

(iii) marksmanship fundamentals and safety procedures;

(iv) care, cleaning and maintenance of weapons;

(v) familiarization instruction in basic weapon retention and disarming techniques;

(vi) familiarization instruction in daylight, dim-light and darkness shooting; and

(vii) instruction and shooting exercises with semi-automatic pistols or revolvers;

(B) a written examination which requires the trainee to obtain a 70 percent pass score and covers the areas listed in paragraph (a)(5)(A)(i), (ii), (iii), (v), and (vi); and

(C) a daylight course of fire which requires the trainee to fire 35 out of 50 rounds into the center mass portion of the national rifle association TQ-19 target in a static position. The firing shall be from positions specified by the certified firearm trainer and from distances that vary as specified by the certified firearm trainer from a minimum of three feet to a maximum of 75 feet.

(b) The plan of operation may provide for a trainer to excuse a trainee from firing with a particular hand when the trainee has demonstrated to the trainer a disability with that hand or arm.

(c) An applicant for a firearm trainer certificate shall be afforded the opportunity to correct any deficiencies in the plan of operation which are identified by the attorney general.

(d) After the plan of operation has been approved by the attorney general, a firearm trainer shall submit any proposed modifications to the attorney general for approval. (Authorized by K.S.A. 75-7b18; implementing K.S.A. 75-7b21; effective May 1, 1982; amended April 12, 1996.)

16-5-5. Notice of completion. (a) Firearm trainers shall furnish notice to the attorney general through the Kansas bureau of investigation when an applicant for a firearm permit or an applicant for renewal of a firearm permit has completed a firearm training course within 10 days of the date the training course was completed.

(b) The notice shall be in a form prescribed by the attorney general and shall include:

(1) the name of the applicant for a firearm permit;

(2) the name of the firearm trainer;

(3) the firing range proficiency of the applicant;

(4) the make and serial number of the firearm used to qualify;

- (5) the dates the training course was given;
- (6) the applicant's written examination score; and
- (7) whether the applicant failed or successfully completed the training course.

(c) A copy of this notice shall be given to the applicant and a copy shall be retained by the firearm trainer. (Authorized by K.S.A. 75-7b18; implementing K.S.A. 75-7b17; effective May 1, 1982; amended April 12, 1996.)

Article 6.—FIREARM PERMITS

16-6-1. Training in the handling of firearms. (a) A firearm permit shall not be granted unless the applicant has satisfactorily completed training in the handling of firearms and the lawful use of force from a certified firearms trainer within 6 months prior to application for the permit. Firearm permits shall be granted only for the firearm or firearms for which the applicant has satisfactorily completed a course of fire from a firearms trainer as specified in K.A.R. 16-5-4(a)(3)(C).

(b) The holder of a firearm permit shall notify the attorney general through the Kansas bureau of investigation within 72 hours of any change of or additional firearm which the permit holder intends to carry. The permit holder shall qualify with such firearm by successfully completing a course of fire as specified in K.A.R. 16-5-4(a)(3)(C) within 30 days of changing or adding a firearm. (Authorized by K.S.A. 75-7b18; implementing K.S.A. 75-7b17; effective May 1, 1982; amended April 12, 1996.)

16-6-2. Demonstrates a need. To demonstrate a need to carry a firearm in order to protect the licensee's life or property or to protect the life or property of a client, an applicant for a firearm permit shall be required to submit a written statement which describes the type of private detective business in which the applicant engages or intends to engage and the specific reasons the applicant believes carrying a firearm is necessary for that type of detective business. (Authorized by K.S.A. 75-7b18; implementing K.S.A. 75-7b17; effective Feb. 13, 1995.)

Article 7.—CRIME VICTIMS ASSISTANCE GRANTS

16-7-1. Definitions. (a) "Crime victims assistance fund" means the fund created by 1989 HB 2200, Sec. 29.

(b) "Grant funds" means funds credited to the crime victims assistance fund and available for support of existing programs or assistance in establishing new programs which provide services to the victims of crime. Grant funds do not include monies in the crime victims assistance fund set aside by the victims' rights coordinator to fund programs having statewide impact.

(c) "Program period" means the period for which each program is funded with monies from the crime victims assistance fund, normally 12 months (one fiscal year) unless special consideration is requested and approved.

(d) "Victims' rights coordinator" means the individual appointed by the attorney general to administer the crime victims assistance fund pursuant to 1989 HB 2200, Sec. 32. (Authorized by and implementing HB 2200, Sec. 29; effective, T-16-8-22-89, Aug. 22, 1989; effective Nov. 13, 1989.)

16-7-2. Application deadlines. (a) Applications for grants during the fiscal year ending June 30, 1990 shall be submitted to the victims' rights coordinator on or before November 1, 1989. Applicants demonstrating need to the satisfaction of the grant committee may be granted emergency funding before the November 1 deadline.

(b) Beginning with the fiscal year July 1, 1990 through June 30, 1991, each grant application shall be submitted to the victims' rights coordinator no later than 60 days before the beginning of each fiscal year.

(c) Applications for receipt of unobligated grant monies remaining in the victims assistance fund after the initial annual grant pursuant to subsections (a) or (b) may be submitted at any time. (Authorized by 1989 HB 2200, Sec. 29; implementing 1989 HB 2200, Sec. 29, Sec. 32; effective, T-16-8-22-89, Aug. 22, 1989; effective Nov. 13, 1989.)

16-7-3. Application requirements. (a) Each grant application shall include:

- (1) a summary cover page;
- (2) a program narrative;
- (3) a budget summary;
- (4) a budget narrative;
- (5) certified assurances;
- (6) any evidence of local government support (preferably including support of the district or county attorney in the area to be served);
- (7) an audit schedule; and

(8) a designation.

(b) Each summary shall include a quick reference to the grant application.

- (c) Each program shall include:
 - (1) needs assessment;
 - (2) program description;
 - (3) program objectives;
 - (4) program budget;
 - (5) audit control;
 - (6) communication plan;
 - (7) staffing plan;
 - (8) dissemination plan.

This regulation shall be effective December 20, 1989. (Authorized by and implementing HB 2200, Sec. 29; effective, T-16-8-22-89, Aug. 22, 1989; effective Nov. 13, 1989.)

16-7-4. Application requirements. (a) Each grant application shall include the following criteria:

- (1) the degree of need on the problem;
 - (2) the quality of the documentation of the victims;
 - (3) the record of services to the victims in similar programs;
 - (4) the degree of need on the program;
 - (5) the adequacy of the program;
 - (6) the efficiency of the program;
 - (7) any receipt of other funds.
- (b) The victims' rights coordinator shall review the application process of the applicant on and after December 20, 1989. (Authorized by and implementing HB 2200, Sec. 29; effective, T-16-8-22-89, Aug. 22, 1989.)

16-7-5. Application requirements. (a) Each grant application shall include the following:

- (1) a summary cover page;
- (2) a program narrative;
- (3) a budget summary;
- (4) a budget narrative;
- (5) certified assurances;
- (6) any evidence of local government support (preferably including support of the district or county attorney in the area to be served);
- (7) an audit schedule; and