

Draft for Public Comment

Ver. 1 - 11/9/2022 2:48:00 PM- Private Security Bill

Bill No. ***

Introduced By *****

By Request of the (Agency or Department)

A Bill for an Act entitled: "An Act transferring authority from the board of private security to a department program; eliminating licensure of process servers, branch offices of private security companies, resident private security company managers, and combining proprietary and contract private security companies into a single license type; reducing age limitations for private investigators; transferring the department's duty to issue photograph identification cards to the employer; making minor changes in style; amending sections 37-60-101, 37-60-103, 37-60-104, 37-60-105, 37-60-202, 37-60-301, 37-60-303, 37-60-304, 37-60-310, 37-60-314, 37-60-320, 37-60-404, 37-60-405, and 37-60-407, MCA; and repealing sections 2-15-1781, 25-1-1101, 25-1-1102, 25-1-1104, 25-1-1107, 25-1-1111, 25-1-1112, 37-60-201, 37-60-211, 37-60-302 and 37-60-309, MCA."

Be it enacted by the Legislature of the State of Montana:

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Section 1. Section 37-60-101, MCA, is amended to read:

"37-60-101. Definitions. As used in this chapter, the following definitions apply:

(1) ~~"Alarm response runner " means an individual employed by an electronic security company, a contract security company, or a proprietary security organization to respond to security alarm system signals.~~

~~(2) "Armed" means an endorsement authorizing a security guard or a private investigator, to possess and use one or more firearms an individual who at any time wears, carries, or possesses a firearm in the performance of professional duties according to training and reporting requirements prescribed by this chapter and department rule.~~

~~(3) (2) "Armed carrier service" means any person or a private security firm that provides the transport or offer to transport items of value security, company who transports or offers to transport under armed private security guard from one place to another any currency, documents, papers, maps, stocks, bonds, checks, or other items of value that require expeditious delivery.~~

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~~(4) "Armed private investigator" means a private investigator who at any time wears, carries, or possesses a firearm in the performance of the individual's duties.~~

~~(5) "Armed private security guard" means an individual employed by a contract security company or a proprietary security organization whose duty or any portion of whose duty is that of a security guard, armored car service guard, or carrier service guard and who at any time wears or carries a firearm in the performance of the individual's duties.~~

~~(6) "Armored car service" means any person or security company who transports or offers to transport under armed private security guard from one place to another any currency, jewels, stocks, bonds, paintings, or other valuables of any kind in a specially equipped motor vehicle that offers a high degree of security.~~

~~(7) "Board" means the board of private security provided for in 2-15-1781.~~

~~(8) "Branch office" means any office of a licensee within the state, other than its principal place of business within the state.~~

~~(9) "Contract security company" means any person who undertakes to provide a private security guard, alarm~~

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~~response runner, armored car service, street patrol service, or armed carrier service on a contractual basis to another person who exercises no direction and control over the performance of the details of the services rendered.~~

~~(10)~~ (3) "Department" means the department of labor and industry provided for in 2-15-1701.

~~(11)~~ (4) (a) "Electronic security firm ~~company~~" means a person who sells, installs, services, or maintains a security alarm system and employs ~~who undertakes to hire, employ, and provide alarm response runners and security alarm installers on a contractual basis to another person who does not exercise direction and control over the performance of the services rendered.~~

(b) The term does not include a person whose primary business is that of a locksmith and who may also install closed-circuit television cameras and battery-operated door devices.

~~(12) "Firearms course" means the course approved by the board and conducted by a firearms instructor.~~

~~(13) "Firearms instructor" means an individual who has been approved by the board to instruct firearms courses in the use of weapons.~~

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~~(14) "Insurance adjuster" means a person employed by an insurance company, other than a private investigator, who for any consideration conducts investigations in the course of adjusting or otherwise participating in the disposal of any claims in connection with a policy of insurance but who does not perform surveillance activities or investigate crimes against the United States or any state or territory of the United States.~~

~~(15) "Licensee" means a person licensed under this chapter.~~

~~(16) "Paralegal" or "legal assistant" means a person qualified through education, training, or work experience to perform substantive legal work that requires knowledge of legal concepts and that is customarily but not exclusively performed by a lawyer and who may be retained or employed by one or more lawyers, law offices, governmental agencies, or other entities or who may be authorized by administrative, statutory, or court authority to perform this work.~~

~~(17) "Person" means an individual, firm, company, association, organization, partnership, or corporation.~~

~~(18)~~ (5) "Private investigator" means an individual a person other than an insurance adjuster who for any

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consideration makes or agrees to make any investigation ~~with reference~~ relevant to:

(a) crimes against the United States or any state or territory of the United States;

(b) the identity, habits, conduct, ~~business, occupation,~~ ~~honesty, integrity, trustworthiness, efficiency, loyalty,~~ activity, movement, location, affiliations, associations, transactions, reputation, credibility, or character of any person;

(c) the location, disposition, or recovery of lost or stolen property;

(d) the cause of or responsibility for any fires, libels, losses, accidents, or injury to persons or property; or

(e) gathering evidence for use in ~~to be used before~~ any legislative, administrative, or judicial proceeding or investigation ~~court, board, officer, or investigating committee.~~

~~(13)~~ (6) "Private security firearms instructor" means an individual who instructs private security guards and private investigators in the use of firearms that may be used while performing professional duties.

~~(19)~~ (7) "Private security firm" means a person who provides one or more of the following:

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(a) private security guard services;

(b) armed private security guard services; or

(c) armed carrier services.

(8) "Private security guard" means an individual employed by a private security firm ~~or assigned duties to protect persons or property a person or property or both a person and property and whose duties or any portion of whose duties include but are not limited to the prevention of unlawful entry, theft, criminal mischief, arson, or trespass on private property, or direct the direction of the movements of the public movement~~ in public areas.

~~(20) "Process server" means a person described in 25-1-1101(1).~~

~~(21) "Proprietary security organization" means any person who employs a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a routine basis solely for the purposes of that person and exerts direction and control over the performance of the details of the service rendered.~~

~~(22) "Resident manager" means the person appointed to exercise direct supervision, control, charge, management,~~

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~~or operation of each office located in this state where the business of the licensee is conducted.~~

~~(23)~~ (9) (a) "Security alarm installer" means an individual employed by an electronic security firm to sell, install, service, or maintain ~~who sells, installs, services, or maintains~~ security alarm systems to detect and signal unauthorized intrusion, movement, break-in, or criminal acts ~~and is employed by an electronic security company.~~

(b) The term does not include a person whose primary business is that of a locksmith and who may also install closed-circuit television cameras and battery-operated door devices.

~~(24)~~ (10) (a) "Security alarm system" means an assembly of equipment and devices or a single device or a portion of a system intended to detect or signal or to both detect and signal unauthorized intrusion, movement, or criminal acts at a location.

(b) The term does not include systems that monitor temperature, humidity, or any other atmospheric condition not directly related to the detection of an unauthorized intrusion or criminal act at a location.

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~~(25) "Security company" means an electronic security company, a proprietary security organization, or a contract security company.~~

~~(26) "Street patrol service" means a person providing patrols by means of foot, vehicle, or other method of transportation using public streets, thoroughfares, or property in the performance of the person's duties and responsibilities.~~

~~(27) "Unarmed private investigator" means a private investigator who does not wear, carry, or possess a firearm in the performance of the individual's duties.~~

~~(28) "Unarmed private security guard" means an individual who is employed by a contract security company or a proprietary security organization, whose duty or any portion of whose duty is that of a private security guard, armored car service guard, or alarm response runner, and who does not wear, carry, or possess a firearm in the performance of those duties."~~

{Internal References to 37-60-101:

R 2-15-1781 a 37-60-105 a 37-60-301}

Section 2. Section 37-60-103, MCA, is amended to read:

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"37-60-103. Purpose. The purpose of this chapter is to regulate the qualifications and standards of practice ~~increase the levels of integrity, competency, and performance of private security firms, electronic security firms, private investigators, private security firearms instructors, private security guards, and security alarm installers~~ companies and their employees who are required to be licensed, firearms instructors, private investigators, and process servers to protect safeguard the public health, safety, and welfare ~~against illegal, improper, or incompetent actions committed by security companies and their licensed employees, firearms instructors, private investigators, or process servers.~~"

{Internal References to 37-60-103: None}

Section 3. Section 37-60-104 , MCA, is amended to read:

"37-60-104. Restrictions on private contract security firms ~~company and proprietary security organization.~~ An employee of a ~~contract~~ private security firm ~~company or proprietary security organization~~ may not make any investigation or investigations except those that are incidental to the theft, loss, embezzlement,

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misappropriation, or concealment of any property or any other thing that the employee has been hired or engaged to protect, guard, or watch."

{Internal References to 37-60-104: None}

Section 4. Section 37-60-105 , MCA, is amended to read:

"37-60-105. Exemptions. (1) ~~This Except as provided in subsection (2),~~ this chapter does not apply to:

(a) an individual ~~any one person~~ employed singly and exclusively by an employer other than a security firm ~~any one employer~~ in connection with the affairs of that employer only and when there exists an employer-employee relationship and the employee is unarmed, does not wear a uniform, and is guarding inside a structure that at the time is not open to the public;

(b) an individual ~~a person~~:

~~(i) employed singly and exclusively by a retail merchant;~~
~~(ii) performing at least some work for the retail merchant as a private security guard; and~~
~~(iii) who has received training as a private security guard from the employer or at the employer's direction;~~

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(c) an officer or employee of the United States, of this state, or of a political subdivision of the United States or this state while the officer or employee is engaged in the performance of official duties;

(d) an individual who provides a person engaged exclusively in the business of obtaining and furnishing information as to about the financial rating, of persons or as to the personal financial habits, and financial responsibility of applicants for insurance, indemnity bonds, or commercial credit;

(e) an attorney ~~at law~~ engaged in the practice of ~~while performing duties as an attorney at law;~~

(f) a law student, legal intern, paralegal, or legal assistant under the direction of ~~employed by one or more attorneys lawyers, law offices, governmental agencies, or other entities;~~

(g) ~~a law student who is serving a legal internship;~~

~~(h) a collection agency or finance company engaged in licensed to do business under the laws of this state, or an employee of a collection agency or finance company licensed in this state while acting within the scope of employment, while making an investigation incidental to the business of the agency or company, including an investigation of the~~

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~~location of a debtor or the debtor's property when the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent;~~

~~(i)(h) special agents employed by railroad companies, provided that the railroad company notifies the board that its agents are operating in the state;~~

~~(j)(i) insurers and insurance producers and insurance brokers licensed by the state while performing duties in connection with insurance transacted by them;~~

~~(k)(j) individuals engaged in the collection and examination of physical material for forensic purposes;~~

~~(l)(k) an insurance adjuster, who investigates insurance claims to determine the extent of liability under an insurance policy but does not engage in surveillance or investigate crime as defined in 37-60-101;~~

~~(m)(l) an internal investigator or auditor while making an investigation incidental to the business of the agency or company by which the investigator or auditor is singularly and regularly employed;~~

~~(n)(m) an individual ~~a person~~ who evaluates and advises management on personnel and human resource issues in the workplace;~~

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(n) a confidential mediator under 42-6-104; or

~~(o) a certified public accountant with a license or permit to practice or a practice privilege under 37-50-314 or 37-50-325 to the extent that the person is engaged in an investigation relating to the practice of public accounting.~~

~~(2) (a) Except as provided in subsection (2) (b), persons listed as exempt in subsection (1) are not exempt for the purposes of acting as registered process servers.~~

~~(b) Subsection (2) (a) does not apply to attorneys or persons who make 10 or fewer services of process in a calendar year, as provided in 25-1-1101."~~

{Internal References to 37-60-105:
a37-60-301}

Section 5. Section 37-60-202 , MCA, is amended to read:

"37-60-202. Rulemaking power. The department board shall adopt and enforce rules:

(1) establishing the qualifications for licensure and standards of practice for ~~of resident managers, licensees, holders of identification cards, and process servers, in addition to those prescribed in Title 25, chapter 1, part~~

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~~11, and in this chapter, necessary to promote and protect the public welfare;~~

~~(2) establishing, in accordance with 37-1-134, application fees for original licenses and identification cards, and providing for refunding of any fees;~~

~~(3) (a) requiring approval of the board prior to the establishment of branch offices of any licensee; and~~

~~(b) establishing qualification requirements and license fees for branch offices identified in subsection (3)(a);~~

~~(4) for the certification of private investigator, private security guard, security alarm installer, and alarm response runner training programs, including the certification of firearms training programs;~~

~~(5) for the licensure of firearms instructors;~~

~~(6) for the approval of weapons;~~

~~(7)(3) requiring licensees, except process servers, to file an insurance policy with the board; and~~

(8) the issuance of provisional licenses ~~probationary identification cards~~ for private investigators and security alarm installers who do not meet the experience or examination ~~requirements for age, employment experience, or written examination.~~"

{Internal References to 37-60-202: None}

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Section 6. Section 37-60-301 , MCA, is amended to read:

"37-60-301. Private security licenses License required - armed endorsement process server registration required. (1)

~~(a) Unless licensed under this chapter and Title 37, chapter 1, a Except as provided in 37-60-105, it is unlawful for any person may not practice as: to act as or perform the duties, as defined in 37-60-101, of a contract~~

~~(a) a private security firm; company, a proprietary security organization,~~

~~(b) an electronic security firm; company; a branch office,~~

~~(c) a private investigator;~~

~~(d) a security alarm installer; an alarm response runner, a resident manager,~~

~~(e) a certified private security firearms instructor; or~~

~~(f) a private security guard without having first obtained a license from the board.~~

~~(b) Except as provided in 25-1-1101(2), it is unlawful for any person to act as or perform the duties of a process server for more than 10 services of process in a calendar~~

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~~year without being issued a certificate of registration by the board.~~

(2) No private security guard or private investigator may possess or use firearms while performing professional duties without meeting the qualifications specified by the department and maintaining a current armed endorsement from the department.

(3) It is unlawful for any unlicensed person to act as, pretend to be, or represent to the public that the person is licensed as any of the license types listed in subsection (1)~~a contract security company, a proprietary security organization, an electronic security company, a branch office, a private investigator, a security alarm installer, an alarm response runner, a resident manager, a certified firearms instructor, or a private security guard.~~

~~(3) A person appointed by the court as a confidential intermediary under 42-6-104 is not required to be licensed under this chapter. A person who is licensed under this chapter is not authorized to act as a confidential intermediary, as defined in 42-1-103, without meeting the requirements of 42-6-104.~~

~~(4) A person who knowingly engages an unlicensed contract security company, proprietary security organization,~~

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~~electronic security company, branch office, private investigator, security alarm installer, alarm response runner, resident manager, certified firearms instructor, or private security guard is guilty of a misdemeanor punishable under 37-60-411."~~

{Internal References to 37-60-301:
x45-5-223}

Section 7. Section 37-60-303 , MCA, is amended to read:

"37-60-303. Private security services licensure License or registration qualifications - fingerprinting - insurance. (1) ~~An~~ Except as provided in subsection ~~(7)(a)(5),~~ an applicant for licensure as a private investigator, private security guard, private security firearms instructor, or security alarm installer ~~under this chapter or an applicant for registration as a process server under this chapter is subject to the provisions of this section and shall submit evidence~~ satisfactory to the department that the applicant:

(a) is at least 18 years of age;

(b) has completed high school or equivalent education ~~is a citizen of the United States or a legal, permanent resident of the United States;~~

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(c) meets character and fitness for licensure as demonstrated by a lack of unprofessional conduct ~~has not been convicted in any jurisdiction of any felony or any crime involving moral turpitude or illegal use or possession of a dangerous weapon, for which a full pardon or similar relief has not been granted; and~~

(d) has successfully completed training, experience, and examination requirements as the department may prescribe by rule ~~has not been judicially declared incompetent by reason of any mental disease or disorder or, if so declared, has been fully restored;~~

~~(e) is not suffering from habitual drunkenness or from narcotics addiction or dependence;~~

~~(f) is of good moral character; and~~

~~(g) complied with other experience qualifications as may be set by the rules of the board.~~

(2) In accordance with 34 U.S.C. §40316 (Public law 92-544), the department shall require private investigator, private security guard, private security firearms instructor, and security alarm installer license applicants to submit a full set of fingerprints to obtain a national criminal history background check by the Montana department of justice and the federal bureau of investigation for the

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~~purposes of licensure In addition to meeting the qualifications in subsection (1), an applicant for licensure as a private security guard, security alarm installer, or alarm response runner shall:~~

~~(a) complete the requirements of a training program certified by the board and provide, on a form prescribed by the department, written notice of satisfactory completion of the training; and~~

~~(b) fulfill other requirements as the board may by rule prescribe.~~

~~(3) In addition to meeting the qualifications in subsection (1), each applicant for a license to act as a private investigator shall submit evidence under oath that the applicant:~~

~~(a) is at least 21 years of age;~~

~~(b) has at least a high school education or the equivalent;~~

~~(c) has not been dishonorably discharged from any branch of the United States military service; and~~

~~(d) has fulfilled any other requirements as the board may by rule prescribe.~~

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~~(4) The board may require an applicant to demonstrate by written examination additional qualifications as the board may by rule require.~~

~~(5) An applicant for a license as a private security patrol officer or private investigator who will wear, carry, or possess a firearm in performance of the applicant's duties shall submit written notice of satisfactory completion of a firearms training program certified by or satisfactory to the board, as the board may by rule prescribe.~~

~~(6) Except for an applicant subject to the provisions of subsection (7) (a), the board shall require a background investigation of each applicant for licensure or registration under this chapter that includes a fingerprint check by the Montana department of justice and the federal bureau of investigation.~~

~~(7) (a) An applicant for licensure as a private security
A firm or an electronic security firm, company,
association, partnership, limited liability company,
corporation, or other entity that intends to engage in
business governed by the provisions of this chapter shall:~~

~~(a) must be lawfully organized and registered with the
secretary of state or otherwise incorporated under the laws~~

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~~of this state or qualified to do business within this state and must be licensed by the board or, if doing business as a process server, must be registered by the board; and~~

(b) designate a manager to act as the primary contact between the firm and the department ~~Individual employees, officers, directors, agents, or other representatives of an entity described in subsection (7)(a) who engage in duties that are subject to the provisions of this part must be licensed pursuant to the requirements of this part or, if doing business as a process server, must be registered by the board.~~

(4) Each security firm, electronic security firm, private investigator, armed private investigator, and private security firearms instructor shall maintain insurance policies in an amount and type prescribed by department rule."

{Internal References to 37-60-303:
a37-60-304 x37-60-409}

Section 8. Section 37-60-304, MCA, is amended to read:

"37-60-304. ~~Licenses and registration~~ Application application form and content. (1) ~~An application for a license or for a certificate of registration as a process~~

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~~server must be submitted to the department and accompanied by the application fee set by the board.~~

~~(2) An applicant for licensure under this chapter must complete an application on a form, pay a fee prescribed by the department, application must be made under oath and must include:~~

~~(a) the full name and address of the applicant;~~

~~(b) the name under which the applicant intends to do business;~~

~~(c) a statement as to the general nature of the business in which the applicant intends to engage;~~

~~(d) a statement as to whether the applicant desires to be licensed as a contract security company, a proprietary security organization, an electronic security company, a branch office, a certified firearms instructor, a private investigator, a security alarm installer, an alarm response runner, a resident manager, or a private security guard or registered as a process server;~~

~~(e) except for an applicant pursuant to 37-60-303(7)(a), one recent photograph of the applicant, of a type prescribed by the department, and one classifiable set of the applicant's fingerprints;~~

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~~(f) a statement of the applicant's age and experience qualifications, except for an applicant pursuant to 37-60-303(7)(a); and include~~

~~(g) other information, evidence, statements, or documents as may be prescribed by the rules of the department board.~~

~~(3) The board shall verify the statements in the application.~~

~~(4)(2) Upon verification of each applicant's qualifications and fitness for licensure, the department shall issue a license, subject to the renewal and termination provisions of 37-1-141 ~~The submittal of fingerprints is a prerequisite to the issuance of a license or certificate of registration to an applicant, other than an applicant under 37-60-303(7)(a), by means of fingerprint checks by the Montana department of justice and the federal bureau of investigation.~~"~~

{Internal References to 37-60-304: None}

Section 9. Section 37-60-310, MCA, is amended to read:

"37-60-310. Display of license and identification card.

(1) Each private security firm, electronic security firm, and private investigator shall post their current licenses

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~~A license must at all times be posted~~ in a conspicuous place in the principal place of business of the licensee.

(2) A holder of an identification card shall carry the card while performing the cardholder's duties. A peace officer of this state or any of its political subdivisions may request to see the card at any reasonable time, and the card must be shown."

{Internal References to 37-60-310: None}

Section 10. Section 37-60-314, MCA, is amended to read:

"37-60-314. Nontransferability of license -- record changes. (1) A license issued under this chapter is not transferable.

(2) A licensee shall notify the department ~~board~~ within 5 days of any change in its officers or directors, name, address, employment, or other material change in the information previously furnished or required to be furnished to the department ~~board~~ or any other material change or occurrence that could reasonably be expected to affect the licensee's right to a license. Upon the change or occurrence, the board may suspend or revoke the license

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or may allow the business to be carried on for a temporary period under terms and conditions as the board may require.

(3) This section may not be applied to restrict the sale of a business if the buyer qualifies for a license under the provisions of this chapter."

{Internal References to 37-60-314: None}

Section 11. Section 37-60-320, MCA, is amended to read:

"37-60-320. Fees. (1) The fees ~~prescribed by the board and~~ collected by the department must be deposited into the state special revenue fund established to administer the provisions of this chapter ~~for the use of the board,~~ subject to 37-1-101(6).

(2) The department shall keep an accurate account of funds received and vouchers issued by the department."

{Internal References to 37-60-320: None}

Section 12. Section 37-60-404 , MCA, is amended to read:

"37-60-404. Duty to maintain ~~employee records.~~ Each private security firm, electronic security firm, and

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private investigator ~~employer~~ shall maintain and produce
upon department request, employment and training records a
record containing information relative to the employer's
employees that may be as prescribed by the department rule
board."

{Internal References to 37-60-404: None}

Section 13. Section 37-60-405, MCA, is amended to
read:

"37-60-405. Approval of weapons. The weapons to be
carried by armed licensees or holders of identification
cards as private security personnel or private
investigators must be approved by the department ~~board."~~

{Internal References to 37-60-405: None}

Section 14. Section 37-60-407 , MCA, is amended to
read:

"37-60-407. Badges prohibited - standards for uniforms
and equipment - identification cards ~~Regulation of~~
uniforms, badges, and equipment. (1) No private
investigator and no licensee or officer, director, partner,
manager, agent or employee of a private security firm or
electronic security firm, licensee may wear, carry, or

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display a badge in connection with the business activities of the private investigator, private security firm, or electronic security firm licensee's business.

(2) The department shall ~~board is authorized to~~ establish rules regulating uniforms, ~~and any~~ emblems, patches, insignias, ~~and~~ devices that may be either worn or displayed on uniforms, vehicles, or equipment used by any private investigator, private security firm, or electronic security firm.

(3) At all times while providing professional duties, private investigators, private security guards, and security alarm installers shall carry or wear a photographic identification card on a form prescribed by the department.

(4) A holder of a photographic identification card in subsection (3) shall produce the card upon reasonable request of any peace officer."

{Internal References to 37-60-407: None}

NEW SECTION. Section 15. {standard} Repealer. The following sections of the Montana Code Annotated are repealed: 2-15-1781, 25-1-1101, 25-1-1102, 25-1-1104, 25-1-1107, 25-1-1111, 25-1-1112, 37-60-201, 37-60-211, 37-60-302 and 37-60-309.

{Internal References to 2-15-1781:

x2-15-1891 renumbered r25-1-1104 a37-60-101

Internal References to 25-1-1101:

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25-3-105 37-60-101 37-60-105 37-60-301

Internal References to 25-1-1102: None

Internal References to 25-1-1104: None

Internal References to 25-1-1107: None

Internal References to 25-1-1111:

r25-1-1112

Internal References to 25-1-1112: None

Internal References to 37-60-201: None

Internal References to 37-60-211: None

Internal References to 37-60-302: None

Internal References to 37-60-309: None

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