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2008-2009 Legislative Changes to the Private Investigator's Act

With the passage of Assembly Bill (AB) 2423 (Chapter 675, Statutes of 2008, Bass), the Private Investigators Act was modified as it relates to the issuance of probationary licenses and denials of licenses. Effective January 1, 2009, the Director of Consumer Affairs has the ability to grant a probationary private investigators' license to an applicant, subject to certain terms and conditions. When the Director denies an applicant a private investigators' license, a statement of reasons for the denial must be sent to the applicant. Additionally, beginning July 1, 2009, an applicant may, upon written request, obtain a copy of his/her criminal history record if such record was used as a basis for the denial. See the new sections below:

7526.1. (a) Notwithstanding any other provision of law, the director may, in his or her sole discretion, grant a probationary license to an applicant subject to terms and conditions deemed appropriate by the director, including, but not limited to, the following:

- (1) Continuing medical, psychiatric, or psychological treatment.
- (2) Ongoing participation in a specified rehabilitation program.
- (3) Abstention from the use of alcohol or drugs.
- (4) Compliance with all provisions of this chapter.

(b) (1) Notwithstanding any other provision of law, and for purposes of this section, when deciding whether to grant a Probationary license, the director shall request that an applicant with a dismissed conviction provide proof of that dismissal and shall give special consideration to applicants whose convictions have been dismissed pursuant to Section 1203.4 or 1203.4a of the Penal Code.

(2) The director shall also take into account and consider any other reasonable documents or individual character references provided by the applicant that may serve as evidence of rehabilitation as deemed appropriate by the director.

(c) The director may modify or terminate the terms and conditions imposed on the probationary license upon receipt of a petition from the applicant or licensee.

(d) For purposes of granting a probationary license to qualified new applicants, the director shall develop standard terms of probation that shall include, but not be limited to, the following:

- (1) A three-year limit on the individual probationary license.
- (2) A process to obtain a standard license for applicants who were issued a probationary license.
- (3) Supervision requirements.
- (4) Compliance and quarterly reporting requirements.

7564.1. (a) Notwithstanding Sections 7561.1 and 7561.4 or any other provision of law, the director may revoke, suspend, or deny at any time a license under this chapter on

any of the grounds for disciplinary action provided in this chapter. The proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director shall have all the powers granted therein.

(b) The director may deny a license to an applicant on any of the grounds specified in Section 480.

(c) In addition to the requirements provided in Sections 485 and 486, upon denial of an application for a license, the director shall provide a statement of reasons for the denial that does the following:

(1) Evaluates evidence of rehabilitation submitted by the applicant, if any.

(2) Provides the director's criteria relating to rehabilitation, formulated pursuant to Section 482, that takes into account the age and severity of the offense, and the evidence relating to participation in treatment or other rehabilitation programs.

(3) If the director's decision was based on the applicant's prior criminal conviction, justifies the director's denial of a license and conveys the reasons why the prior criminal conviction is substantially related to the qualifications, functions, or duties of a licensed private investigator.

(d) Commencing July 1, 2009, all of the following shall apply:

(1) If the denial of a license is due at least in part to the applicant's state or federal criminal history record, the director shall, in addition to the information provided pursuant to paragraph (3) of subdivision (c), provide to the applicant a copy of his or her criminal history record if the applicant makes a written request to the director for a copy, specifying an address to which it is to be sent.

The state or federal criminal history record shall not be modified or altered from its form or content as provided by the Department of Justice.

(B) The criminal history record shall be provided in such a manner as to protect the confidentiality and privacy of the applicant's criminal history record and the criminal history record shall not be made available by the director to any employer.

(C) The director shall retain a copy of the applicant's written request and a copy of the response sent to the applicant, which shall include the date and the address to which the response was sent.

(2) The director shall make that information available upon request by the Department of Justice or the Federal Bureau of Investigation.

(e) Notwithstanding Section 487, the director shall conduct a hearing of a license denial within 90 days of receiving an applicant's request for a hearing. For all other hearing requests, the director shall determine when the hearing shall be conducted.