

**December 2014**

**Re: Mandatory Colorado PI Licensing Efforts Come Home to Roost**

**NANCY PELOSI** once said, “We have to pass the bill so you can find out what’s in it, away from the fog of controversy” (will she not ever disappoint us?). During **2015**, history will repeat itself when Colorado moves to mandatory licensing of Colorado private investigators. The time has come to have an adult conversation with the truth. There will be no winners, just losers.

We’re moving from a failed voluntary licensing program that has cost the Colorado taxpayers **\$70,000 (ouch!)** to a mandatory licensing program that in time will fail for the exact same reason that the voluntary program failed - exorbitant licensing fees, and along the way, many in the profession will not participate, many will figure out how to get around the law, many will go out of business, and the licensing fee will continue to rise when fewer apply. Fewer private investigators mean higher fees and fewer choices for the consumer.

We know the reality of the 2015 mandatory program is **not** about consumer protection, it’s about the high licensing fees from the voluntary program – consumer protection was nothing more than a ruse and it worked well. Those who testified in favor of mandatory licensing in front of the emotional left-leaning members of the **Colorado Legislature** were sure not to let the facts get in the way of a good story. It’s interesting not one Republican voted in favor of mandatory licensing.

During testimony the **2014 Colorado Legislature** didn’t hear facts; they heard stories, half-truths, and assertions. **Not one** police report of alleged PI misconduct was produced, **not one** charging document, **not one** certified record of conviction, **not one** civil lawsuit, **not one** small claims court filing, **not one** judgment made against any Colorado private investigator was ever admitted during the hearings. We’re investigators, for crying out loud; if documents existed, why weren’t they made available and submitted during these hearings?

Testimonial nonsense isn’t allowed in Colorado courts and has no place during the legislative process.

It is unfortunate words like honesty and sincerity have been replaced with words like disgrace and deceit.

Statistical information of alleged private investigator misconduct from licensed states like Nebraska, Kansas, Utah, and New Mexico, was never discussed by the pro-licensing crowd because it didn’t fit their “consumer protection agenda.” A review of complaints filed in those

states were few and far between and had to do with “important” stuff like administrative errors on behalf of the private investigator such as post-dating a check, failing to file paperwork on time, or failing to sign a document.

We have safeguards in place regarding bad actor private investigators. Let’s not forget the **Consumer Protection Unit** of the **Colorado Attorney General’s Office**. It is their responsibility to investigate complaints on behalf of consumers that involve contract disputes, fiduciary issues, shoddy work, etc. We have **Small Claims** and **Civil courts** to settle disputes, and we have **Title 18, the Colorado Criminal Code**, to handle criminal complaints against Colorado private investigators – what else do we need?

The license cost will be based in part on the number issued. Let’s take a peek at the numbers guessing game of the past:

**2012:** 300 licenses were to be issued during the voluntary program.

**2013:** The first mandatory licensing bill, which was killed, 500 licenses were to be issued.

**2015:** 400 mandatory licenses are expected to be issued.

Nothing more than a guessing game with a whole lot of wishful thinking.

Before the 2015 license cost is discussed, let’s take a walk down memory lane as it relates to the voluntary program:

- a) The **2012** (start of the program) projected number of private investigator licenses to be issued was **300**. The reality was approximately **120** were issued, each costing **\$340**. Someone guessed wrong.
- b) During **2013** approximately 85 licenses were issued, 19 of those were issued to out-of-state companies, and the cost of the license was **\$640**.
- c) During **2014** approximately **40** licenses were issued at a cost of about **\$1,094** each.

The **Colorado Legislative Council** drafted a “Final Fiscal Note” consisting of six pages dated **July 23, 2014**. On page 2, “the following assumptions are made:”

- **400** licenses to be issued
- **\$300** license cost
- **\$30** applied to the **\$70,000** deficit (ouch)
- **\$22.50** CBI background check
- **\$17.25** FBI background check
- **\$100** bond (best guess at this point in time; not part of the Fiscal Note)

**Total Cost: \$469.75**

The first private investigator stakeholder's meeting concerning mandatory licensing took place during **October 2013** at the State Capitol. **SENATOR LINDA NEWELL** made it perfectly clear she didn't want to discuss the licensing issue, she didn't want to debate it, and she said "we will be licensed." You gotta love an elected official that refuses to listen to both sides of an issue.

On Tuesday, **November 19, 2013**, those of you in favor of licensing refused to debate the issue at a meeting of the **Colorado Society of Private Investigators**. At that meeting, members and non-members conducted an exhaustive two and a half hour debate and discussed the pros and cons of licensing, testing, requirements, continuing education, and potential cost of a license. Nothing was off the table, nothing taboo, everyone present was encouraged to participate. At the end of the meeting, all in attendance wanted nothing to do with licensing Colorado private investigators.

For years, you in favor of licensing strutted around the State Capitol with your high profile lobbyists and **SENATOR LINDA NEWELL**, refusing to debate the licensing issue with those of us that had valid concerns as it relates to mandatory licensing, specifically the number of participants and the cost of the license. You had no facts then to support your position of private investigator misconduct and you don't have any today.

The mandatory licensing law was signed into law by **GOVERNOR HICKENLOOPER** during **June 2014**. On Wednesday, **November 12, 2014**, at the first stakeholders meeting with **DORA** (the pity party), the following statement was made: *"You guys have to make this palatable and regulators should anticipate costs over the next three years and set a licensing fee that won't escalate dramatically year to year, as the fees of the program did."* No, **DORA** doesn't need to make anything palatable. Their job is to administer a program based upon a poorly crafted bill which might be difficult for them just as the voluntary program was. You had your way with the Colorado Legislature but it stopped there; now you're dealing with the group that's going to tell **you** how your program is going to run.

Those in favor of licensing have outdone yourselves with the open book, feel good, all winners / no losers, politically correct test – it's not intended to evaluate skill level; it's all about "consumer protection" (sic). How does an open book test evaluate anyone's skill level? Here are a couple of examples of questions that might be asked – can you answer them?

- 1) How old do you need to be to apply for a Colorado private investigator license?
  - a. 18 years
  - b. 21 years old
  - c. 25 years old
  - d. Age not necessary; you only have to be breathing on your own
  
- 2) How much do you think the private investigator license will cost in **2016**?
  - a. \$600
  - b. \$750
  - c. \$900
  - d. \$1,100

The Colorado taxpayers (all of us) are out \$70,000 as a result of the reckless and irresponsible voluntary licensing program. It'll take six years at \$30 per license issued to repay the taxpayer. Some of you paid \$1,094 for the voluntary license during **2014** and apparently are due a refund of about \$800. You are the same group that created the deficit in the first place, how can you demand that **DORA** reimburse you before the Colorado taxpayer is reimbursed \$70,000?

Then there is the fact that we have to print our own licenses – sent to you by email, no official paper with watermark, no official seal, and no photo identification... what an absolutely brilliant idea! This new cost-saving feature is the new private eye license, a.k.a., the pocket card. That might work for the electrician or plumber who has an appointment to meet you at your home. But show that to the cop on the street while conducting surveillance or when trying to see an inmate at a county or state correctional facility. Instead of a pocket card, perhaps we should refer to it as the amusement card. Tell me again how this license is about public confidence.

Some of you might not be aware that some states are contemplating getting rid of mandatory licensing of private investigators and other similar professions. Some states have determined that regulation is not the key and does not solve problems. And really, what profession would invite the government in to regulate it? No wonder Hollywood has so much fun poking at those in our profession. Whatever happened to the free market system in this country?

In an email I received from **SENATOR LINDA NEWELL**, she states the following reasons Colorado private investigators should be licensed:

- a. "We are one of only three states left that do not have mandatory licensing of private investigators. This is for both consumer protection and to legitimize the profession to the public."

*You gotta love this one. Just because all states have done it with the exception of three, we must follow suit. Consumer protection – well first of all you have to tell us consumer protection from what (the State Legislature?). "To legitimize the profession to the public"? Right, tell that to my clients.*

- b. "We went with the voluntary licensure a couple years ago because that was the only way we could get it through both chambers of the legislature. At that time **DORA** and the governor were concerned that the model was not going to work due to the unpredictability of fees coming in but they trusted that we would follow through if there were any hiccups."

*We had no hiccup; we had a very big burp as a result of the inflated number of private investigators that might apply for a license. You and those you represented were responsible for that.*

- c. "Now because we have fewer than expected applying for licensure, that spreads the cost around to fewer PI's so the fees will have to go up dramatically to cover the cost of the program."

*Now this makes a lot of sense; spread the cost around. Kind of sounds like wealth re-distribution to me.*

- d. "Additionally, we are now hearing of some problems of the lack of professionalism and allegedly criminal behavior of some PI's so we want to make sure that those "bad actors" don't make all of you "look bad". Thus, the licensure for everyone."

*Really? Who's this "we"? What are "we" hearing? Define "lack of professionalism" and "alleged criminal behavior." This kind of nonsense is the from the same group that brought us licensing, the same group that couldn't tell the truth when they testified at legislative hearings, the same group that couldn't provide police documents, reports, etc., trust me, we have nothing to be concerned about.*

- e. "I'm sorry for those of you who want to "stay off the grid", so to speak, but we believe this will also help promote your profession well and open up for more business to you all."

*Tell me how licensing is going to help promote our profession. Forty years without a license and we've been just fine. **SENATOR NEWELL**, you've been drinking the kool-aid; it's too bad you did not spend more time researching this entire issue as opposed to what you did do, which was to listen to just one side. Those of us who opposed the licensing bill might not have changed your vote, but hearing all the facts would at least have kept you from making statements that were demonstrably false and indefensible.*

The next scheduled stakeholder's meeting with DORA, is **January 5, 2015**. Here are some suggested items for discussion:

1. Apparently there's nothing in the statute or the draft rules that requires a private investigator to disclose their licensing level to a potential client. If that be the case, why do we have the level 1 and level 2 in the first place?
2. Can a private investigator accept a retainer (the rules say you cannot accept money for work not completed)?
3. Does **DORA** have the right to inspect our files looking for written contracts and reports?

In closing, let's examine all those consumer protection safeguards:

- 1) The open book test – it does nothing to ensure applicants truly understand the roles and responsibilities of private investigators and as a result is of no consequence to consumer protection.
- 2) Self-printed licenses without photos – defeats the entire purpose of having a regulatory agency certify applicants. The street cop, record keepers, clients, witnesses and other private investigators will be amused as you hand them your personally self-printed entertainment card.
- 3) Level 1 and Level 2 Investigator Licenses – without any requirement to actually tell the Colorado consumer what level anyone is at (let alone that they would even know what “Level 1” and “Level 2” actually mean). It’s of no consequence to consumers whatsoever.

If you’re wondering about reciprocity, here is the answer. Any authority to establish “reciprocity” with other states must be authorized in Colorado law through the **General Assembly**. Because reciprocity is not authorized, **Department of Regulatory Agencies (DORA)** may not enter into any reciprocity relationships with other states. Private investigators licensed in other states will have to obtain a Colorado license in order to conduct business in Colorado (SB14-133, 12-58.5 C.R.S.).

Mandatory licensing allows non-Colorado private investigators to apply and be issued a license, which means they will bring in their own investigators and essentially take work from the rest of us that reside and operate our businesses here in Colorado – why was that allowed?

Mandatory licensing will not change the fact that Colorado private investigators themselves must establish with the public and their clients professionalism and credibility; it won’t come from the government (which has more than its fair share of embarrassing public trust issues). Education, training, and just plain, good business practices are far more effective tools than government regulations.

Sincerely,

Rick Johnson  
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