



July 11, 2020

The Honorable Colorado State House of Representatives
72nd General Assembly
2nd Regular Session
Colorado State Capitol
200 East Colfax Avenue
Denver, CO, 80203

Dear Honorable Members of the Colorado State House of Representatives:

Today I vetoed House Bill 20-1207, "Concerning the continuation of the regulation of private investigators" at _____.

House Bill 20-1207 (HB 20-1207) continues the regulation of private investigators in the Colorado Department of Regulatory Agencies (Department or DORA), which is scheduled to repeal on September 1, 2020. A private investigator (PI) is a private sector professional who, for some consideration, accepts employment to conduct a non-law enforcement-related investigation. PIs gather information for many types of inquiries including legal, financial, personal information, background checks, missing person searches, and computer crimes, among others.

First, a brief history of the regulation of private investigators in Colorado. Beginning in 1887, the State required anyone operating a detective business that carries out investigations on behalf of a private client to obtain a license from the Secretary of State (punishable by a misdemeanor criminal offense). This requirement was repealed by the General Assembly in 1984. The Colorado Office of Policy, Research, and Regulatory Reform (COPRRR) in DORA then completed sunrise reviews for regulation in 1985, 1987, 2000, and 2006; each time they concluded that regulation was not necessary. Finally, in 2011, the Department reported through yet another sunrise review that PIs should be minimally regulated to ensure they have "either a surety bond or errors and omissions insurance, and passage of a jurisprudence examination."¹ Based on this recommendation, the General Assembly instead passed a bill with voluntary licensure of PIs. The General Assembly then again took the extraordinary step in 2014 to expand regulation for private investigators to mandatory licensure, citing concerns that the voluntary licensure they had created was not sufficient to support the program's operations.

¹ 2011 Sunrise Review: Private Investigators. (2011, February 17). Retrieved June, 2020, from <https://drive.google.com/file/d/0B8bNvef083ydcC02cWxmcDh2R0E/view>



Which brings us to today; COPRRR performed a scheduled sunset review of private investigators in October 2019 and determined that regulation should not continue. They noted that while before regulation it may have been believed there existed a slight chance that the public could be financially harmed by not regulating PIs, data can now “verify that this harm does not occur.”² In fact, since licensing became mandatory on June 1, 2015, there have been 77 complaints resulting in only eight disciplinary actions taken against licensees. “Disciplinary actions against licensed individuals are virtually nonexistent,” COPRRR stated. Furthermore, “when discipline has been taken, the infractions have not been directly associated with the harming of a consumer.”³ In this kind of situation, it’s important to ask ourselves whether the medicine of additional paperwork, fees, and red tape is worse than the disease.

Last year, I noted that occupational licensing is often not superior to other forms of consumer protection. Too often it is used to protect existing professionals within an occupation against competition from newcomers entering that occupation. Licensing in the United States has at times prevented traditionally economically disadvantaged people from having the ability to access occupations. When the supply of professionals is restricted, the cost of services increases, and the poorest among us lose the ability to access these services. Likewise, license and registration fees, paired with coursework and other materials associated with credentialing can lock people out of professions they would otherwise be qualified for. Eliminating unnecessary credentialing broadens diversity and allows more to offer and access various services. HB 20-1207 would have continued licensing that rarely serves to protect the public from harm, and instead usually served incumbent license-holders as a barrier to entry for new competition including many retired officers of the peace. This is especially true for PIs, as licensure does not require any continuing education or real test of competency, instead requiring passage of an “open-book” jurisprudence exam. This regulation does place an undue burden on new entrants into the occupation and causes needless bureaucracy as well as the cost to the State and Coloradans. By allowing the regulation of PIs to sunset, we hope that this will allow more people to enter the occupation and to access these services.

We do believe that in any activity, PIs included, there is some potential for consumer harm resulting from rare instances of deceptive trade practices, much if not all of which can be addressed through other areas of law. We are open to working with the General Assembly to take reasonable steps to address these concerns while stopping short of full licensure. Together, we could work next session on legislation more consistent with the Sunrise Review requiring any individual or

² 2019 Sunset Review Private Investigators Licensure Act. (2019, October 15). Retrieved June, 2020, from https://drive.google.com/file/d/12bl52A8hDhVpczjx_AShxTPt57uss7AL/view

³ Ibid.



business that uses the title “Private Investigator” or “Private Detective” to pass a criminal background check and potentially retain some level of insurance or bond. These statutory requirements would not require full licensure to implement.

We appreciate the sponsors and General Assembly’s efforts to protect Coloradans. However, we oppose continuing to regulate an occupation through licensure when the Department’s sunset report recommended otherwise. Colorado is best served at this time by ending the regulation of private investigators because the public interest is not protected from clear, understandable harm by the licensing of PIs.

What is more, at a time when people are facing tremendous economic insecurity, I encourage the legislature to strongly consider how to reduce barriers to entry into various professions, and to open doors of opportunity for all Coloradans.

Therefore, HB 20-1207 is disapproved and vetoed.

Sincerely,

A handwritten signature in blue ink that reads "Jared Polis".

Jared Polis
Governor