

**PROPOSED REGULATION OF THE
PRIVATE INVESTIGATOR'S LICENSING BOARD**

LCB File No. R047-12

June 21, 2012

EXPLANATION - Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1, 2, 7, 8, 11, 13 and 14, NRS 648.030; §§3-6, NRS 648.030 and 648.140; §§9 and 10, NRS 648.030 and 648.185; §12, NRS 648.030 and 648.162.

A REGULATION relating to private investigators; revising conditions under which the Private Investigator's Licensing Board may require a background investigation of a licensee who changes status to that of a qualifying agent for a corporate licensee; revising provisions governing out-of-state licensees who apply for authorization to work on a particular case in Nevada; revising provisions for determining whether an employee of a licensee is a "bona fide employee"; revising provisions relating to the administration of examinations to unlicensed persons; revising provisions relating to the types of polygraphic instruments approved for use in conducting polygraphic examinations; revising the minimum standards of accuracy and reliability for polygraphic instruments; revising the phases of supervision of an internship in polygraphic examination by a supervising examiner; revising provisions governing whether a corporation may continue to conduct operations if its qualified agent is absent from this State for a certain period; eliminating certain obsolete provisions; and providing other matters properly relating thereto.

Section 1. NAC 648.260 is hereby amended to read as follows:

648.260 1. A person who holds a license may change his or her status to that of a qualifying agent for a corporate licensee without taking the written examination, if the transfer is within the same category of license. The Board ~~{will not}~~ *may* require a background investigation of any person ~~{solely because of a change in the person's}~~ *whose status has changed* pursuant to this section ~~{-} if:~~

(a) The most recent background investigation was completed more than 18 months before the change in status; or

(b) There has been any complaint filed against the person with the Board.

2. If a person who is applying for a license for himself or herself previously held a license in the same category and surrendered it to become a qualifying agent for a corporation, the Board ~~{will not}~~ **may** require a background investigation if ~~{the person has filed the application within 60 days after terminating his or her status as a qualifying agent}~~ :

(a) The most recent background investigation was completed more than 18 months before the person applied for the license for himself or herself; or

(b) There has been any complaint filed against the person with the Board.

Sec. 2. NAC 648.280 is hereby amended to read as follows:

648.280 1. A private investigator, reposessor, private patrol officer, polygraphic examiner or process server who:

(a) Has been licensed and is in good standing in another state or a territory of the United States;

(b) Has begun activities for a client in a particular case in that jurisdiction; and

(c) Needs to continue the activities of that case in Nevada,

→ may apply to the ~~{Chair or Acting-Chair}~~ **Executive Director** of the Board for authorization to work on that case in Nevada. A licensee of ~~{this}~~ **the** Board in the appropriate category must agree with the applicant to ~~{supervise}~~ **oversee** the applicant's work in this State and to obligate the licensee's insurance for protection against liability to third persons to cover the applicant's activities in this State.

2. The application must include:

- (a) Evidence of the applicant's license and good standing in the other jurisdiction;
- (b) A brief description of the type of work the applicant intends to do in this State;
- (c) An estimate of the time necessary to accomplish the work; and
- (d) A copy of ~~{a contract of employment}~~ ***an independent contractor agreement*** between the applicant and a licensee of ~~{this}~~ ***the*** Board in the appropriate category.

3. If the application is in order, the ~~{Chair or Acting Chair}~~ ***Executive Director*** may authorize the described work for an appropriate period.

4. In the absence of special circumstances, repeated applications made pursuant to this section constitute a cause for denial of the application.

5. The Executive Director shall provide a quarterly report to the Board indicating the number of applications approved pursuant to this section.

Sec. 3. NAC 648.336 is hereby amended to read as follows:

648.336 ~~{+}~~ For the purposes of NRS 648.140, an employee of a licensee shall be deemed to be a "bona fide employee" if:

~~{+}~~ ***1. The Board makes a determination that the employee is {a bona fide employee in accordance with the criteria set forth in paragraph 10.416.052 of the Commerce Clearing House Unemployment Insurance Reports, which is hereby adopted by reference;***

~~{+}~~ ***subject to the control of the licensee with regard to the performance of services;***

2. The wages paid to the employee by the licensee are subject to the Federal Insurance Contributions Act, 26 U.S.C. §§ 3101 et seq., and the Federal Unemployment Tax Act, 26 U.S.C. §§ 3301 et seq.; and

~~{(c)}~~ 3. The licensee is required to file reports with the Employment Security Division of the Department of Employment, Training and Rehabilitation and its insurer who provides industrial insurance concerning the payment of compensation to the employee. As used in this ~~{paragraph}~~ **subsection**, “insurer” has the meaning ascribed to it in NRS 616A.270.

~~{2. - A copy of paragraph 10.416.052 of the Commerce Clearing House Unemployment Insurance Reports may be obtained from the Private Investigator's Licensing Board, Office of the Attorney General, Capitol Complex, Carson City, Nevada 89710, for the price of \$2, plus postage.}~~

Sec. 4. NAC 648.3385 is hereby amended to read as follows:

648.3385 1. A licensee shall not employ a person unless the person employed by the licensee is provisionally registered or registered. A licensee shall immediately terminate the employment of a person employed by a licensee if the Board notifies the licensee that the Board has denied, suspended or revoked the provisional registration or registration of the person.

2. If a person applies for employment with a licensee, the licensee or a designated employee of the licensee shall review the system of records maintained by the Board pursuant to NAC 648.3435 to determine whether the person is registered, is provisionally registered or has had his or her registration or provisional registration denied, suspended or revoked.

3. If a licensee determines that the person is not registered or provisionally registered, and is not subject to denial, suspension or revocation, the licensee must instruct the person to:

- (a) Complete the application for registration;
- (b) Obtain two complete sets of fingerprints or provide a receipt for electronic submission of fingerprints to the Board;

- (c) Pay all applicable fees; and
- (d) Unless otherwise instructed by the Board, submit the application for registration to the Board.

4. If a licensee determines that the provisional registration or registration of a person who applies for employment with the licensee has been denied, suspended or revoked by the Board, the licensee {:

~~.. (a) Shall not accept an application for registration from the applicant; and~~

~~---(b) Shall~~ **shall** notify the applicant that he or she must contact the Board to obtain information concerning the denial, suspension or revocation.

5. ~~If a licensee determines that a person who applies for employment with the licensee is provisionally registered or registered with the Board, the licensee shall provide such information to the Board not less than 5 business days after the licensee makes the determination.~~

~~---6.}~~ Each licensee ~~{must}~~ **shall** maintain a passport-size photograph of each person employed by the licensee. The licensee shall retain the photograph for not less than 5 years after the last date on which the person is employed by the licensee. The photograph may be in the form of a photograph or may be digitally stored, but the photograph must be capable of being reproduced and available at the request of the Board.

~~{7.}~~ 6. Any person who violates the provisions of this section is subject to disciplinary action by the Board.

~~{8.}~~ 7. A licensee shall maintain written documentation establishing that the licensee received an application from each applicant for employment before accessing the Internet

website established pursuant to NAC 648.3435 for at least 4 years after the date of receipt of the application.

~~19.~~ 8. The Board will interpret “employed by” as used in this section and NRS 648.060 to include a person who performs the same duties as an employee.

Sec. 5. NAC 648.341 is hereby amended to read as follows:

648.341 ~~1.~~ ~~As a condition of registration of an unlicensed employee pursuant to NRS 648.140,~~ ***Before a licensee employs an unlicensed person***, a private patrol officer or security guard who is licensed by the Board must ~~administer~~ :

1. ***Administer*** an examination provided by the Board and ensure that the unlicensed person passes the examination with a score of 100 percent ~~before the licensee employs any unlicensed person unless the unlicensed person:~~

- ~~(a) Is a clerical employee; or~~
- ~~(b) Has ;~~

2. ***Verify that the unlicensed person has passed an examination administered by the Board with a score of 100 percent; or***

3. ***Verify that the unlicensed person has*** passed an examination administered by another licensee within the immediately preceding 60 months with a score of 100 percent.

~~2. In the quarterly report required pursuant to NRS 648.140, a private patrol officer or security guard who is licensed by the Board shall certify that each unlicensed employee, except a clerical employee, has passed the examination required by subsection 1 within the immediately preceding 60 months with a score of 100 percent.~~

Sec. 6. NAC 648.343 is hereby amended to read as follows:

648.343 1. A private patrol officer or security guard licensed by the Board ~~{shall complete each form}~~ *who administers an examination* provided by the Board ~~{for each}~~ *to an* unlicensed ~~{employee; except: At least one of those forms must be a form for registering the unlicensed employee; and another must contain the results of the examination. The licensee shall distribute a copy of the form for registering the unlicensed employee to the Board within 10 days after the date of employment.}~~ *person shall record the date of the examination on the unlicensed person's record on the Internet website established pursuant to NAC 648.3435 within 5 business days after the date of the examination.*

2. The licensee shall keep a copy of ~~{each form provided pursuant to subsection 1 and}~~ the ~~{original}~~ results of the examination on file for 60 months after the date of the examination. The Board may audit the records of the licensee. The licensee shall ~~{submit a copy of the form for registering the unlicensed employee to}~~ *notify* the Board *through the Internet website established pursuant to NAC 648.3435* within 10 days after the licensee terminates the employment of an unlicensed employee. ~~{except a clerical employee.}~~

3. As proof that an unlicensed employee has passed the examination with a score of 100 percent, a licensee may accept a card issued for that purpose by the Board to the unlicensed employee which contains the results of the examination ~~{administered by another licensee within the immediately preceding 60 months.}~~ *or verify the examination through the Internet website established pursuant to NAC 648.3435.*

Sec. 7. NAC 648.3435 is hereby amended to read as follows:

648.3435 1. The Board will establish and maintain an Internet website that contains a system of records which:

(a) Contains information regarding ~~each person who is~~ :

(1) *Each person who is* registered with the Board, including, without limitation, the contact information of the licensee who employs the person; and

(2) *Each person who has applied for registration with the Board, including, without limitation, the contact information of the person; and*

(b) Identifies each person whose registration is expired, is denied by the Board, or is otherwise suspended or revoked.

2. The portion of the Internet website that contains the system of records may only be accessed in the manner authorized by this section and NAC 648.3385.

3. Before a licensee grants any employee access to the portion of the Internet website that contains the system of records maintained by the Board, the licensee shall provide the Board with the name, social security number and date of birth of the employee.

4. Upon the termination of employment of the employee or the reassignment of the employee to a position that no longer requires the employee to access the portion of the Internet website that contains the system of records, the licensee shall immediately notify the Board of the termination or reassignment.

5. Except as otherwise provided in this section and NAC 648.3385, the information contained in the system of records is confidential and must not be disclosed by any licensee or employee of a licensee.

Sec. 8. NAC 648.345 is hereby amended to read as follows:

648.345 1. A licensee or an employee ~~{of a licensee for whom a registration fee is paid pursuant to NAC 648.340}~~ *who is registered pursuant to NRS 648.1493* may not carry any

firearm while performing the duties for the type of business for which he or she is licensed or employed unless the licensee or employee:

- (a) Is certified by the Board as a firearms instructor pursuant to subsection 2;
- (b) Has successfully completed and received certification from a course of training approved by the Board in carrying, handling and using firearms safely; or
- (c) Has been actively employed as a peace officer and is certified by the Board pursuant to subsection 5.

2. The Board may certify a person who meets the requirements of subsection 1 of NRS 648.110 as a firearms instructor in carrying, handling and using firearms safely if the applicant:

- (a) Is at least 21 years of age;
- (b) Has not been convicted of a felony or any crime involving the illegal use or possession of a firearm; and
- (c) Submits a completed application with proof satisfactory to the Board of the applicant's qualifications and experience and pays a fee of \$100. The application must include:
 - (1) A detailed statement of the applicant's qualifications and experience in carrying, handling and using firearms;
 - (2) A detailed statement of the applicant's qualifications and experience in providing instruction to other persons in carrying, handling and using firearms safely; and
 - (3) Evidence of the applicant's successful completion of at least 40 hours of training on the instruction of peace officers or security officers in carrying, handling and using firearms safely.

3. To renew the applicant's certification as a firearms instructor, the applicant must:

(a) Submit an application for renewal to the Board on or before July 1 next following the date the certificate was issued or last renewed;

(b) Submit proof satisfactory to the Board of the completion of at least 12 hours of education or training on subjects described in NAC 648.346 within the previous 24 months; and

(c) Pay a fee to the Board of \$100.

4. As evidence of a person's certification as a firearms instructor or renewal thereof, the Board will issue to the person a card which is sequentially numbered and of a size to be carried in a wallet. The card will contain the date of its issuance and expiration.

5. The Board may certify a licensee or employee who has been employed as a peace officer if he or she submits a completed application to the Board that is accompanied by:

(a) Proof satisfactory to the Board that the applicant was employed as a peace officer, as defined in NRS 169.125, for at least 10 years, and was employed as a peace officer during the 5 years immediately preceding the date of the application;

(b) A statement of the training and experience the applicant obtained in the use of firearms while employed as a peace officer;

(c) Proof satisfactory to the Board of the applicant's qualification through a course of fire within the 3 months immediately preceding the date of the application; and

(d) An application fee of \$10.

➤ In addition to the application fee, the applicant must pay a fee of \$10 for a card issued pursuant to NAC 648.350.

Sec. 9. NAC 648.360 is hereby amended to read as follows:

648.360 ~~{the following types of analog}~~ *Analog* or computerized polygraphic instruments ~~{produced by the following manufacturers,~~ when adjusted properly, are approved for use in conducting polygraphic examinations:

1. ~~{the Keeler Polygraph}~~ *Axciton Systems, Inc.;*
2. ~~{the Associated Research Polygraph;~~
3. ~~{the "Penograph," "Statesman," "Diplomat," "Ambassador," "Factfinder," "Factfinder II," "Courier II," "LX3000," "LX4000" and any other models of polygraphic instruments produced by the}~~ Lafayette Instrument Company;
3. *Limestone Technologies, Inc.; or*
4. ~~{the "Deceptraph," "Interrogaph," "Executive," "Emotional Stress Monitor," "Polyscribe," "Executive Polyscribe," "Ultrascript," "CPS-II" and any other models of polygraphic instruments produced by the}~~ Stoelting Company . {;
5. ~~{the "Sensor-Box" and any other models of polygraphic instruments produced by Axciton Systems, Inc.; and~~
6. ~~{the "DataPac 4-SB" and any other models of polygraphic instruments produced by Limestone Technologies, Inc.}~~

Sec. 10. NAC 648.365 is hereby amended to read as follows:

648.365 1. Each polygraphic instrument must meet the ~~{following}~~ minimum standards of accuracy and reliability {;

~~{a} Components of polygraphic instruments used to record respiration must, when the system is closed, be capable of:~~

~~--- (1) Consistently producing a range of movement of the recording pen of not less than 1 inch nor more than 1.2 inches when the pneumograph is extended 1.4 inch; and~~

~~--- (2) Showing no perceptible loss of pressure during a period of 3 minutes;~~

~~--- (b) Components of polygraphic instruments used to record cardiovascular activity must, when closed and pressurized to 90 millimeters of mercury, be capable of:~~

~~--- (1) Consistently producing a range of movement of the recording pen of not less than 1 inch nor more than 1.2 inches when the pressure in the system is increased 2 millimeters of mercury; and~~

~~--- (2) Showing a loss of pressure of not more than 1 millimeter of mercury during a period of 3 minutes;~~

~~--- (c) Components of polygraphic instruments used to record changes in skin resistance shall, when in the "manual mode," be capable of consistently producing a range of movement of the recording pen of not less than 1 inch when 1,000 ohm is introduced into the circuit and the component is set at maximum sensitivity, or when 5,000 ohm is introduced into the circuit and the component is set at 25 percent of maximum sensitivity; *established by the manufacturer of the instrument.*~~

2. A polygraphic examiner shall verify that a polygraphic instrument meets these standards at least once during each 30 days the instrument is in use and shall maintain a record of that verification.

Sec. 11. NAC 648.375 is hereby amended to read as follows:

648.375 1. An internship in polygraphic examination consists of the following phases of supervision:

(a) During the first ~~{3 months of the internship.}~~ **25 examinations conducted by the intern,** the supervising examiner shall directly and personally supervise and review all polygraphic activities of the intern.

(b) During the ~~{fourth to the sixth month, inclusive.}~~ **remainder** of the internship, the supervising examiner shall directly and personally supervise and review the polygraphic activities of the intern at least once a week.

~~{(c) During the seventh to the twelfth month, inclusive, of the internship, the supervising examiner shall directly and personally supervise and review the polygraphic activities of the intern at least once every 2 weeks.}~~

~~{(d) During the remainder of the internship, the supervising examiner shall review and supervise the polygraphic activities of the intern to the extent that supervision and review are appropriate.}~~

~~{2. In addition to fulfilling the requirements set forth in subsection 1, the supervising examiner shall directly and personally supervise all the intern's polygraphic activities until the intern has successfully completed at least 25 polygraphic examinations.}~~

~~3. 2. During the entire period of the internship, the supervising examiner is responsible for all the polygraph activities of the intern.~~

Sec. 12. NAC 648.431 is hereby amended to read as follows:

648.431 1. If a notice of violation is issued, the Board will impose a fine of not more than the following amounts for violations of the provisions listed:

	First Offense	Second Offense	Third and Subsequent Offense
NRS 648.135	\$50	\$100	\$200
Subsection 4 of NRS 648.140	100	200	300
Subsection 2 of NRS 648.142	25	50	75
Subsection 3, 4 or 5 of NRS 648.142	50	100	200
Subsection 1 of NAC 648.530	50	100	200

2. If a notice of violation is issued, the Board will impose a fine of not more than the following amounts for violations of the provisions listed:

Subsection 1 of NRS 648.148	\$50
Subsection 2 of NRS 648.148	75
Subsection 1 of NRS 648.149	50
NAC 648.380	25
NAC 648.525	100

3. If a notice of violation is issued, the Board will impose a fine upon a licensee calculated per employee of not more than the following amounts for violations of the provisions listed:

	First Offense	Second Offense	Third and Subsequent Offense
Subsection 2 of NRS 648.060	\$50	\$75	\$100
Subsection 2 {-} of NRS 648.140	25		
{NAC 648.341}	25	50	75
NAC 648.343	25		
Subsection 1 of NAC 648.345	750		

4. If a notice of violation is issued, the Board will impose a fine of not more than:

(a) For the first violation of a provision of NAC 648.350, \$500; and

(b) For the first violation of subsection 2 of NAC 648.530, \$300.

➤ In the case of a second or subsequent violation, the Board will take any disciplinary action authorized pursuant to NRS 648.175 which the Board deems appropriate.

5. If a notice of violation is issued, the Board will impose a fine of not more than \$150 on a licensee's employee who violates subsection 4 of NAC 648.345.

Sec. 13. NAC 648.520 is hereby amended to read as follows:

648.520 1. If the person who is affiliated with a corporation and who possesses the qualifications required for the license issued to the corporation dies, becomes disabled ~~{-}~~ *or*

ceases to be affiliated with the corporation , ~~for is absent from the State for more than 30~~
~~consecutive days;~~ the corporation may continue to conduct its operations, but not for more than
120 days. If after 120 days the corporation has not affiliated with another qualified person, it
shall cease to do business. For the purposes of this subsection, a person licensed as a qualified
agent of a corporation ceases to be affiliated with it when he or she is no longer fulfilling his or
her obligations under a contract which has been made between him or her and the corporation
and approved pursuant to NAC 648.250.

2. If the corporation has affiliated with another qualified person, it may continue to do
business until the next regularly scheduled meeting of the Board, at which meeting the Board
will approve or disapprove the affiliation of the qualified person with the corporation. If the
Board does not approve the affiliation of the person, it may permit the corporation more time in
which to affiliate with another qualified person who holds a license from the Board. The
additional time may not extend beyond the next regularly scheduled meeting of the Board.

Sec. 14. NAC 648.340 is hereby repealed.

TEXT OF REPEALED SECTION

648.340 Registration fee due from licensee. (NRS 648.030, 648.140) Each licensee shall pay a registration fee of \$8.50 for each of his or her unlicensed employees, except clerical employees.

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE BUILDING
401 S. CARSON STREET
CARSON CITY, NEVADA 89701-4747
Fax No.: (775) 684-6600



LEGISLATIVE COMMISSION (775) 684-6800
STEVEN A. HORSFORD, *Senator, Chairman*
Tammy Grace, *Acting Director, Secretary*

INTERIM FINANCE COMMITTEE (775) 684-6821
DEBBIE SMITH, *Assemblywoman, Chair*
Rick Combs, *Fiscal Analyst*
Mark Krmpotic, *Fiscal Analyst*

TAMMY GRACE, *Acting Director*
(775) 684-6800

BRENDA J. ERDOES, *Legislative Counsel* (775) 684-6830
PAUL V. TOWNSEND, *Legislative Auditor* (775) 684-6815
DONALD O. WILLIAMS, *Research Director* (775) 684-6825

June 21, 2012

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JUN 25 2012

ATTORNEY GENERAL
PRIVATE INVESTIGATORS BOARD

Mechele Saucedo-Ray
Private Investigator's Licensing Board
Office of the Attorney General
3476 Executive Point Way, Suite 14
Carson City, NV 89706

Re: LCB File No. R047-12

Dear Ms. Saucedo-Ray:

A proposed regulation of the Private Investigator's Licensing Board has been examined pursuant to NRS 233B.063 and is returned in revised form.

We invite you to discuss with us any questions which you may have concerning this review. Please make reference to our file number in all further correspondence relating to this regulation.

Very truly yours,

A handwritten signature in cursive script, appearing to read "B. Erdoes".

Brenda J. Erdoes
Legislative Counsel

Daniel Peinado
Deputy Legislative Counsel

DP/amh
Enclosure