



October 2006

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Editor

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UTAH PRIVATE INVESTIGATORS NEED THE UTAH LAW TO BE CHANGED

(Opinion)

Utah private investigators (PIs) are at a considerable disadvantage. We cannot obtain authority to work in other states based on reciprocity, nor can we get licenses to work in those states on short notice. But practically anyone from inside or outside Utah can get a license in five days and begin to work in Utah immediately, even if they are not qualified for a license.

In 2003 the legislature passed legislation that required the Utah Bureau of Criminal Investigation (BCI) to issue private investigator licenses within five days after an application is received. There are three types of licenses; apprentice; registrant; and agency. Only a PI with an agency license may solicit and conduct business on his own. And to qualify for an agency license an applicant must have 2,000 hours of investigative experience.

The law passed in 2003 however voids the requirement that an agency applicant have 2,000 hours of investigative time in order to get a temporary license. Under the current law practically anyone from inside or outside Utah can get a temporary agency license in five days and begin working in Utah. **No other state has such a weak licensing law for PIs.**

The 2003 law requires BCI to issue an agency license to practically any applicant within five days even if they have no investigative experience. That person may then solicit and perform work whether qualified or not. New PI licenses are reviewed quarterly by the Utah Private Investigator Hearing and Licensure Board. That board gives the final approval to licenses previously issued by BCI. If the board determines that a given agency applicant is unqualified, then his license is revoked.

This sequence of licensing and review allows an unqualified person to practice as an agency for almost three months before his qualifications are reviewed by the state board and his temporary license is revoked if he is unqualified.

This allows for unfair competition. It degrades the professionalism of the private investigator industry. And it gives an advantage to PIs from other states who want to work in Utah which advantage is not extended to Utah PIs who want to work in other states.

How did we get into this mess? The 2003 legislation was proposed by a PI who had an ongoing need for apprentices on short notice. Had the five day requirement of BCI to issue licenses been limited to apprentices, the damage would have been considerably less.

But even if the BCI is only required to issue apprentice licenses within five days, there is still an unfair advantage to PIs from other states. An apprentice is required to work under the direction of an agency. What is to stop a PI from another state from coming to Utah and getting a quickie apprentice license and claiming he is working for an agency in another state?

What then is to be done? Legislation should be passed retreating to the way PI licenses used to be issued, with a few modifications. Prior to the 2003 legislation only the State PI Board could issue licenses when it met quarterly and reviewed the qualifications of the applicants. A reasonable modification would be to require BCI to issue only the apprentice licenses within five days and that these apprentices could only work for Utah licensed agencies, and not for any PI agency from out of state.

And reciprocity legislation should also be passed so that Utah PIs may legally go into other states to continue investigating cases originating in Utah.

Dennis O. Williams has testified previously before the Utah legislature regarding these issues. He is a former President of the Private Investigator Association of Utah and served for four years on the Utah Private Investigator Hearing and Licensure Board. He is a retired Supervisory Special Agent of the Federal Bureau of Investigation.

Utah P.I. Licensing Laws Need Improvement

**By: Scott Heinecke, Former PIAU President
(Opinion)**

I think in evaluating the current status of the private investigator licensing in Utah it is important to know some of the history behind this. In 1983 when I started my private investigation business, it became evident that Utah's licensing laws were in desperate need of change. In Salt Lake City and some other local jurisdictions throughout the state you were required to get fingerprinted, have a background check done by the local police department and then you were issued a license by that city or county. Many jurisdictions had no P.I. licensing or just required a city or county business license. There were no education or experience standards to be eligible for a license. It was not uncommon to have potential clients call you and complain about how they had been "ripped off" by an unethical investigator and yet had no recourse to take action against their license. We actually had private investigators operating at that time that had criminal records.

In 1985 I compiled the state licensing laws from the states that had a state licensing at that time. Myself and another investigator, Mike Scott, put together proposed legislation to create a state license in Utah to be regulated by DPS. Unfortunately, the legislation did not

pass because they attached a one hundred thousand dollar fiscal note to the bill. Later P.I.A.U. was formed and we were successful in getting state licensing. I felt that this was a major step in upgrading the professionalism in the private investigation industry in Utah.

Unfortunately, I feel that when the licensing laws were changed to allow licenses to be issued within 5 days that this was not a step in the right direction. Since this more lenient licensing has been in effect I have gotten feedback from apprentices and registrants that even though they are able to get a license more quickly, they do not feel that it has any credibility. They complain that there is no structured training for an apprentice and many times they are just thrown out on surveillance assignments with very little or no training or supervision.

When we passed legislation to allow private investigators to serve additional legal process, I heard from a Constable that I know who complained that as a Constable he had to go through P.O.S.T. training and be certified and yet someone with no experience, training or certification could get their P.I. apprentice license and go out and serve process for a licensed agency.

In this context it is important to evaluate other professions and their licensing regulations. When I was a police officer I decided to get my real estate license. I had to complete 90 hours of schooling and then had to pass a pretty tough written examination to get my license. Once licensed, I had to attend training sessions at the Board of Realtors and also complete on the job training through my broker. To become a real estate broker, you had to have been a real estate agent working for a licensed broker for 3 years then you had to complete additional education and pass another examination. In addition, you must complete in-service training each year to maintain your license. As a police officer you are required to complete 40 hours of in-service training to maintain your P.O.S.T. certification. Is being a private investigator any less of a profession than a real estate agent or a police officer?

I think in order to bring private investigators up to the standard of other professions we need to seriously consider changing the licensing laws which would include requiring education, training, passing an examination and then apprenticeship. These are other changes to licensing which I feel should be considered:

1. Change to two types of licenses issued, an apprentice license and an agency license. The apprentice license would apply to all those with less than 2000 hours of documented investigative experience. The agency license would be issued to those with 2000 or more hours of investigative experience, provided that they have completed the required education and passed the written examination.
2. Require every applicant to complete a minimum number of hours of education through a qualified school. This education would cover basic investigative techniques, surveillance, civil and criminal law, privacy regulations and Utah licensing laws. Set this up through the community colleges similar to the bail enforcement training conducted through the Salt Lake Community College.
3. Require that every applicant pass a written examination.

4. Require all agency licensees to complete 20 hours of in-service training each year to maintain their license.
5. Require all agencies that operate as a corporation or other business entity to have a qualifying agent that holds an agency license. Only those officers or members of the business entity that hold an agency license can conduct investigations. If operating as a partnership then every member of the partnership must be licensed with an agency license.
6. Require all agencies that are operating as a business entity to maintain their office within the state of Utah. Require that they also file a record with the Utah Dept. of Commerce as a foreign corporation and have a qualifying agent domiciled within the state of Utah. This eliminates an out of state agency from hiring apprentices in Utah to conduct their investigations for them. You cannot train and supervise apprentices from another state.
7. Offer reciprocity to other states that have similar licensing laws to Utah. This would allow us to temporarily work in another state that offers reciprocity to us.
8. Require all apprentices to register with DPS the name or names of the agency/ies that they are apprenticing with.
9. Require all agency licensees that do not operate their own businesses to register with DPS the name or names of the agency/ies that they are employed or contracting with.

I do not pretend to have all the answers, but I feel that our licensing laws need to be upgraded in order to get back to the reason we wanted state licensing in the first place and that is professionalism. Hopefully this will stimulate discussion and lead to making changes that will ultimately benefit everyone in this profession.



The members of the PIAU would like to welcome all of the following as new members of the PIAU:

Larry Sturdevant
 Heather Stratton
 Richard A. Fisher
 Bob Welling
 Kelly Call
 Ian Shepherd
 Bobby J. Resendiz
 Carter Orwig
 Joe Reardon

Shawn Kane
 David B. MacGregor
 David Williams
 Dave Bancroft
 Amanda Thompson
 Sonny Glassman
 Eula Wilson-Beeson
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**To contact PIAU members,
first go to piau.com, then select
members. Those with agency
licenses are listed first. Then
those with registrant and
apprentice licenses are listed.**



This year has gone so fast and much has happened positive for PIAU. It is the membership that makes PIAU successful. We have accomplished a lot this year and our membership has increased. This can be attributed to the hard work of leaders such as Kelly Madsen, Vice President and organizer of our quarterly and annual meetings, our Treasurer Brigitte Stevenson, our Secretary Linda Cropp and the other board members that have attended our board meetings and planned for the betterment of PIAU and our profession. I believe in PIAU and know that it has been and will be a positive influence for the private investigative profession.

Our quarterly meetings were well attended and the Annual Conference was a tremendous success and it was enjoyed by all that attended. We had excellent speakers and Kelly Madsen deserves the credit for its success. We had a speaker that spoke for two hours about how the justice system failed him and he served 4 years on death row, had the case reset for trial and was again convicted on faulty evidence and served six more years in prison before DNA proved him innocent. The justice system in the U.S. does make mistakes, however, it is still the best system anywhere in the world. We can be proud to live in the country that provides the freedoms we enjoy daily. We had several new apprentices that I met at the conference and their enthusiasm for the private investigator profession was great to see and surely, they will be an asset to PIAU.

As we close out this year, I am saddened that we are losing some of the officers and board members whom I have enjoyed working with so much. I look forward to working with the new Officers and Board Members in 2007. I have been honored to be your president in 2006 and look forward to serving you as president in 2007. It is the members in PIAU that have contributed to our success over the past 11 years. Surely our profession has been better for us because of the continued efforts of

PIAU. I want to thank all of you that have supported me and helped this year a president.

This year has been a bad year for us in the privacy arena. Telephone records will soon be a thing of the past because of the internet renegades that sell information to anyone for a price. An FBI sting shut one of them down when they provided the FBI their undercover telephone tolls for \$ 125.00. The FBI went to the FCC and Congress over this issue. Also, most of you are aware of the Hewlett Packard case that is playing out in court in California now. James Rapp, a twice convicted felon and former information broker testified before congress to and caused a great deal of concern to the committee members before whom he testified.

Several of the brokers that have websites and only provide telephone information were subpoenaed to testify before the US Congress. Some testified and some took the fifth-amendment. None of them are providing telephone tolls at this time. I anticipate that legislation will soon be passed that will make it a felony to obtain telephone information from the telephone companies. There is good reason to believe that Utility Companies will be included in any legislation. NCISS is there and lobbying to keep these sources available for private investigators in the course of their official business. We'll just have to wait to see what happens. This always happens with the privacy issues when greed takes charge and information is sold indiscriminately to everyone and anyone for the almighty dollar and

with no insight to as how the information will be used.

Mel Ashton
President, PIAU

**Observations of our Vice President re the
Annual Conference of the PIAU
by Kelly Madsen**

Thanks to all the wonderful speakers, our annual conference, held October 13, 2006, at the Law & Justice Center, was once again a huge success.

Our keynote speaker, Ray Krone, was formerly convicted of sexual assault, kidnapping and the murder of a Phoenix woman and sentenced to death row. Mr. Krone gave an extremely compelling overview of his experiences within the criminal justice system. His conviction was overturned after DNA evidence exonerated him and identified another individual as the killer. Mr. Krone lectures nationally and we were very fortunate to have him speak to our organization.

Local Tribune reporter Holly Mullen gave a very insightful and thought provoking presentation on the Destiny Norton murder and ensuing investigation. High profile Idaho attorney Andrew Parnes gave an interesting and informative speech on what attorneys want from their investigators. In the aftermath of a local attorney and investigator being wrongfully accused and arrested, attorney Ben Hamilton gave a helpful overview of the intricacies and realities of protecting yourself during an investigation.

Steve Ketter, a member of the PIAU, gave a very detailed and informative presentation of helpful gadgets and surveillance techniques. Steve was kind enough to step in at the last minute and share his vast wealth of knowledge with us.

Thanks to all who contributed to the conference; we could not have done it without all of you!

Kelly Madsen
Vice President



From the desk of the:

Chairman of the Board



PI Legislative Outlook

Here is an important article regarding federal legislation provided to us by the National Council of Investigation & Security Services, Inc. (NCISS). The PIAU is a member of NCISS as are some of our individual members.

From: Bruce Hulme, Legislative Director

Subject: What follows is a brief overview and for your evaluation a copy of H.R. 4709, the "Telephone Records and Privacy Act of 2006" which passed the House last April and was then sent to the Senate. Late Friday night it passed in the Senate and will be sent to President Bush for his signature. There were some errors reported in the media regarding passage of this legislation. This will provide an overview of the bill. The comments below are not intended as legal advice

H.R. 4709 bans pretexting of telephone companies and their customers for "Confidential Phone Records Information." Chapter 47 of title 18, United States Code, is amended by inserting "Sec. 1039. Fraud and related activity in connection with obtaining confidential phone records on a covered entity." Key elements in this criminal violation are interstate or foreign commerce, making false statements to a covered entity, its employees, the customer or knowingly providing a false or fraudulent document to the entity or accessing customer accounts via the Internet, or by means of conduct that violate section 1030 of this title, without prior authorization from the customer.

There is a prohibition on the sale and transfer of Confidential Phone Records without prior authorization from the customer. A prohibition also exists in knowingly and intentionally purchasing or receiving (or attempting to do so) such information without prior authorization from the customer or if one has reason to know that such information was fraudulently obtained. Violators shall be fined, imprisoned not more than ten years, or both. There are enhanced penalties for aggravated cases such as a pattern of activity involving more than \$100,000, or more than 50 customers, in a 12-month period. Fines shall be doubled and imprisonment mandatory up to five years, or both. There are also enhanced penalties for the use of such information in the furtherance of certain criminal offenses.

One could very well have concerns with the definition of what constitutes "Confidential Phone Records Information." Considering the atmosphere of opposing a bill such as this in light of the H-P media coverage, I'm satisfied that we take our chances with the definition as written.

NCISS supported this bill over other legislation that was offered. The reality is that we had no choice. The definition is a stock phrase used in the federal statutes and has not been intended in the past to pertain to the ID, phone number and address of a subscriber.

The definition would include toll records. That is the intent of this bill. However, we believe the definition does not to preclude us from obtaining the identity and address of the telephone account holder, according to those interviewed during our research.

HR 4709 RFS
109th CONGRESS
2d Session
H. R. 4709

IN THE SENATE OF THE UNITED STATES

April 26, 2006

Received; read twice and referred to the Committee on the Judiciary

AN ACT

To amend title 18, United States Code, to strengthen protections for law enforcement officers and the public by providing criminal penalties for the fraudulent acquisition or unauthorized disclosure of phone records.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Telephone Records and Privacy Protection Act of 2006'.

SEC. 2. FINDINGS.

Congress finds that--

- (1) telephone records can be of great use to criminals because the information contained in call logs may include a wealth of personal data;
- (2) call logs may reveal the names of telephone users' doctors, public and private relationships, business associates, and more;
- (3) call logs are typically maintained for the exclusive use of phone companies, their authorized agents, and authorized consumers;
- (4) telephone records have been obtained without the knowledge or consent of consumers through the use of a number of fraudulent methods and devices that include--
 - (A) telephone company employees selling data to unauthorized data brokers;
 - (B) `pretexting', whereby a data broker or other person represents that they are an authorized consumer and convinces an agent of the telephone company to release the data; or
 - (C) gaining unauthorized Internet access to account data by improperly activating a consumer's account management features on a phone company's webpage or contracting with an Internet-based data broker who trafficks in such records; and
- (5) the unauthorized disclosure of telephone records not only assaults individual privacy but, in some instances, may further acts of domestic violence or stalking, compromise the personal safety of law enforcement officers, their families, victims of crime, witnesses, or confidential informants, and undermine the integrity of law enforcement investigations.

SEC. 3. FRAUD AND RELATED ACTIVITY IN CONNECTION WITH OBTAINING CONFIDENTIAL PHONE RECORDS INFORMATION OF A COVERED ENTITY.

(a) Offense- Chapter 47 of title 18, United States Code, is amended by inserting after section 1038 the following:

`Sec. 1039. Fraud and related activity in connection with obtaining confidential phone records information of a covered entity

`(a) Criminal Violation- Whoever, in interstate or foreign commerce, knowingly and intentionally obtains, or attempts to obtain, confidential phone records information of a covered entity, by--

`(1) making false or fraudulent statements or representations to an employee of a covered entity;

`(2) making such false or fraudulent statements or representations to a customer of a covered entity;

`(3) providing a document to a covered entity knowing that such document is false or fraudulent;

or

`(4) accessing customer accounts of a covered entity via the Internet, or by means of conduct that violates section 1030 of this title, without prior authorization from the customer to whom such confidential phone records information relates;

shall be fined under this title, imprisoned for not more than 10 years, or both.

`(b) Prohibition on Sale or Transfer of Confidential Phone Records Information-

`(1) Except as otherwise permitted by applicable law, whoever, in interstate or foreign commerce, knowingly and intentionally sells or transfers, or attempts to sell or transfer, confidential phone records information of a covered entity, without prior authorization from the customer to whom such confidential phone records information relates, or knowing or having reason to know such information was obtained fraudulently, shall be fined under this title, imprisoned not more than 10 years, or both.

`(2) For purposes of this subsection, the exceptions specified in section 222(d) of the Communications Act of 1934 shall apply for the use of confidential phone records information by any covered entity, as defined in subsection (h).

`(c) Prohibition on Purchase or Receipt of Confidential Phone Records Information-

`(1) Except as otherwise permitted by applicable law, whoever, in interstate or foreign commerce, knowingly and intentionally purchases or receives, or attempts to purchase or receive, confidential phone records information of a covered entity, without prior authorization from the customer to whom such confidential phone records information relates, or knowing or having reason to know such information was obtained fraudulently, shall be fined under this title, imprisoned not more than 10 years, or both.

`(2) For purposes of this subsection, the exceptions specified in section 222(d) of the Communications Act of 1934 shall apply for the use of confidential phone records information by any covered entity, as defined in subsection (h).

`(d) Enhanced Penalties for Aggravated Cases- Whoever violates, or attempts to violate, subsection (a), (b), or (c) while violating another law of the United States or as part of a pattern of any illegal activity involving more than \$100,000, or more than 50 customers of a covered entity, in a 12-month period shall, in addition to the penalties provided for in such subsection, be fined twice the amount provided in subsection (b)(3) or (c)(3) (as the case may be) of section 3571 of this title, imprisoned for not more than 5 years, or both.

`(e) Enhanced Penalties for Use of Information in Furtherance of Certain Criminal Offenses-

`(1) Whoever, violates, or attempts to violate, subsection (a), (b), or (c) knowing that such information may be used in furtherance of, or with the intent to commit, an offense described in section 2261, 2261A, 2262, or any other crime of violence shall, in addition to the penalties provided for in such subsection, be fined under this title and imprisoned not more than 5 years.

`(2) Whoever, violates, or attempts to violate, subsection (a), (b), or (c) knowing that such information may be used in furtherance of, or with the intent to commit, an offense under section 111, 115, 1114, 1503, 1512, 1513, or to intimidate, threaten, harass, injure, or kill any Federal,

State, or local law enforcement officer shall, in addition to the penalties provided for in such subsection, be fined under this title and imprisoned not more than 5 years.

`(f) Extraterritorial Jurisdiction- There is extraterritorial jurisdiction over an offense under this section.

`(g) Nonapplicability to Law Enforcement Agencies- This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or political subdivision of a State, or of an intelligence agency of the United States.

`(h) Definitions- In this section:

`(1) CONFIDENTIAL PHONE RECORDS INFORMATION- The term `confidential phone records information' means information that--

`(A) relates to the quantity, technical configuration, type, destination, location, or amount of use of a service offered by a covered entity, subscribed to by any customer of that covered entity, and kept by or on behalf of that covered entity solely by virtue of the relationship between that covered entity and the customer;

`(B) is made available to a covered entity by a customer solely by virtue of the relationship between that covered entity and the customer; or

`(C) is contained in any bill, itemization, or account statement provided to a customer by or on behalf of a covered entity solely by virtue of the relationship between that covered entity and the customer.

`(2) COVERED ENTITY- The term `covered entity'--

`(A) has the same meaning given the term `telecommunications carrier' in section 3 of the Communications Act of 1934 (47 U.S.C. 153); and

`(B) includes any provider of IP-enabled voice service.

`(3) CUSTOMER- The term `customer' means, with respect to a covered entity, any individual, partnership, association, joint stock company, trust, or corporation, or authorized representative of such customer, to whom the covered entity provides a product or service.

`(4) IP-ENABLED VOICE SERVICE- The term `IP-enabled voice service' means the provision of real-time voice communications offered to the public, or such class of users as to be effectively available to the public, transmitted through customer premises equipment using TCP/IP protocol, or a successor protocol, (whether part of a bundle of services or separately) with interconnection capability such that the service can originate traffic to, or terminate traffic from, the public switched telephone network, or a successor network.'

(b) Chapter Analysis- The table of sections for chapter 47 of title 18, United States Code, is amended by adding after the item relating to section 1038 the following:

`1039. Fraud and related activity in connection with obtaining confidential phone records information of a covered entity.'

SEC. 4. SENTENCING GUIDELINES.

(a) Review and Amendment- Not later than 180 days after the date of enactment of this Act, the United States Sentencing Commission, pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this section, shall review and, if appropriate, amend the Federal sentencing guidelines and policy statements applicable to persons convicted of any offense under section 1039 of title 18, United States Code.

(b) Authorization- The United States Sentencing Commission may amend the Federal sentencing guidelines in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994 note) as though the authority under that section had not expired.

Passed the House of Representatives April 25, 2006. Attest: KAREN L. HAAS, Clerk. *END*

New Officers Elected at the Annual Conference of the Private Investigator's Association of Utah, Which Was Held on October 13, 2006

The new officers begin holding office at the first of the year 2007. At that time the board of directors will elect the new chairman of the board. The following persons were elected as our new officers for the next year:

President: Mel Ashton
Vice President: Daniel D. Hooper
Secretary: Kimberly K. Cooper
Treasurer: Kris Cantil

Board Members: Jake Allred
Mike Barker
Veronica Berrest
Van Canann
Doug Huntsman
Kevin Johnson
Dennis Williams

**HOW TO JOIN THE PRIVATE
INVESTIGATORS
ASSOCIATION OF UTAH**

To join the PIAU or to contact any of our members, please go to our website at PIAU.COM and follow the instructions to print out an application.

