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STATE OF MINNESOTA
PRIVATE DETECTIVE AND PROTECTIVE SERVICES BOARD

In the matter of the proposed
rule of the Private Detective
and Protective Agents Board
Governing Private Detectives
and Protective Agents

STATEMENT OF NEED
AND REASONABLENESS

GENERAL STATEMENT

The private security industry is one of the fastest growing service industries in today's economy. Annually the revenues of this industry amount to approximately 17 billion dollars and, nationwide, an estimated 900,000 people work in the private security industry ("Watch Those Watchdogs", U.S. News and World Report, July 11, 1988, p. 36). By year 2000 it is estimated that 1.3 million people will be working in the private security industry ("Security Guards Enter a New Era of Job Status", Chicago Tribune, July 18, 1988).

People rely on the private security worker to protect them therefore the public is particularly vulnerable to crimes or other misdeeds perpetrated by private security workers. The Minnesota Legislature has taken action to regulate the private security industry for the protection of the public. One such act by the legislature is the passage of Minnesota Statutes, section 326.3331 which requires the Board to adopt rules governing "... the selection, training, conduct discipline, and licensing of private detectives and protective agents...". These proposed rules are designed to address this legislative mandate.

STATUTORY AUTHORITY

Minnesota Statutes, section 326.3321 requires the Board to promulgate rules to govern "... the selection, training, conduct, discipline, and licensing of private detectives and protective agents...". In addition to this specific grant of authority the Board has general rule making authority under Minnesota Statutes, section 14.06 which reads:

Each agency shall adopt rules, in the form prescribed by the revisor of statutes, setting forth the nature and requirements or all formal and informal procedures related to the administration of official duties to the extent that those procedures directly affect the rights of or procedures available to the public.

SMALL BUSINESS CONSIDERATIONS

These rules unavoidably impose an administrative burden on private security business and throughout the drafting process the Board tried to reduce the administrative burden as much as possible consistent with the policy behind the legislative directive to promulgate rules. Particular attention was paid to minimizing the administrative burden for those private security businesses that are small businesses as defined in Minnesota Statutes, section 14.115.

Part .0130, subparts 1 and 2 are designed to provide some flexibility in the reissuance process for businesses that might have trouble complying with all the technical requirements of the statute and these rules. The board submits that these provisions benefit primarily small businesses because small businesses more often lack the personnel and business systems necessary to comply with the state requirements.

The rules contain a graduated application fee schedule based on the size of the applicant's business. This provision is a direct benefit to small businesses. It is justified by the reasonable assumption that a large business will require more services from the Board than a small business.

The compliance and reporting requirements, schedules, and deadlines contained in the proposed rule are the least stringent regulations possible, consistent with the objectives of the underlying legislative mandate. The compliance and reporting requirements in the rule have been consolidated and simplified to the maximum extent feasible, consistent with the underlying legislative mandate. These rules contain no operational or design standards. It is just as necessary to protect the public from abuses by the employees of small private security businesses as it is to protect the public from abuses by the employees of larger private security businesses. The exemption of small businesses from these rules is not feasible, consistent with the underlying legislative mandate.

FEES IMPOSED BY THE RULES

These rules contain a schedule of fees as required by Minnesota Statutes, section 326.3386. The Commissioner Finance has approved the fee schedule as required by Minnesota Statutes, section 16A.128, Subd. 1a and copies of the notice and proposed rules were sent to the chairs of the House Appropriations and Senate Finance Committees as required by Minnesota Statutes, section 16A.128, Subd. 2a.

FISCAL IMPACT

Adoption of these rules will not require the expenditure of public money by local bodies.

ENVIRONMENTAL EFFECTS

Adoption of these rules will have no effect on the environment.

RULE BY RULE ANALYSIS

7506.0100 Definitions. This part contains four subparts. One subpart defines the scope of the definitions. The other three subparts define terms used in the statute and throughout the rules. Two of those terms are defined in statute, and their definitions are taken directly from statute for added clarification to the rule. The other term is not defined in statute..

Subpart 1. limits the scope of the definitions listed in this part to the chapter itself. This subpart is necessary so only the rules pertaining to the private detective and protective agent services will carry these definitions, and no other rule definitions will affect these rules.

Subpart 2. sets forth the definition of "Board". This provision is taken directly from Minnesota Statute, section 326.32, subdivision 2, and is expanded by citing the statute that created the Board. It is necessary in this provision to specify to which board this rule refers.

Subpart 3. sets out the definition of "Director". This provision is necessary to inform the reader of the meaning of this word in the rule.

Subpart 4. sets out the definition of "Minnesota manager". This definition is taken directly from Minnesota Statutes, section 326.32, subdivision 10a. It is reasonable to include this reference to the definition in the rule so the reader is clear of the meaning of the term.

.0110 Internal Procedures. This part describes the duties of the executive director as appointed under Minnesota Statutes, section 326.3321 and the procedures the board will follow when licensing applicants under Minnesota Statutes section 326.3311.

Subpart 1. This provisions details the duties of the executive director of the board. The board is authorized by Minnesota Statutes, section 326.3321; subdivision 1, to employ an executive director and prescribe the duties to be performed. It is necessary to set out the duties of the

director so both the board itself and the director are aware of the working relationship of the two. The duties specified are reasonable as they are all related to the business, management, and oversight of the Board. In addition, as the board members are not involved with the Board on a full-time basis, the director must perform the tasks set out in items A through E to assure that the duties of the Board are carried out. Item F is reasonable and necessary because a task may arise that is Board related yet does not fit neatly into one of the specified tasks.

Subpart 2. Licensing procedure. This provision sets out the procedure that the board will follow when reviewing license applications. It is necessary to describe the review process so that each application is examined in the same manner and given identical consideration for licensing. It is reasonable for the board to review each application (Item 1.) and any findings submitted to them by the director (Item 2.) to assure that the applicant is qualified for and meets the statutory requirements of licensure. Item 3 is a reasonable provision that requires the board to conduct face-to-face meetings with all new applicants. A face-to-face meeting will give the Board the opportunity to question the applicant and explain the Board's role in the industry. In addition, such a meeting can be used to clarify items on the application or answer questions that have arisen as a result of the application or investigation. Therefore, if the Board feels a face-to-face meeting would be informative, it may be requested of an applicant for reissuance as well. Items 1, 2, and 3, assist the board in making informed and fair decisions whether the application is for the initial licensure under paragraph A. or reissuance under paragraph B.

Paragraph C is necessary to address a potential situation: What should the board do with an application which is not reviewed within a reasonable amount of time? Four months was chosen as a potential limit to the review time because it is reasonable to expect the Board to be able to review an application within that period. That should also allow ample time for the director to complete the investigation and for the gathering of additional materials from the applicant if necessary. Once four months have elapsed, it is reasonable for the Board to evaluate why a particular application is not moving forward. Two factors shall be considered before the board requires the applicant to repeat the application process. (1) Requiring an applicant to reapply would only be allowed if it is evident that the passage of time has worked to make the contents of the application outdated. (2) The cause of the delay must be evaluated. If it is due to the Board's extensive workload, the applicant should not be penalized and the application process should continue. However, if the delay is caused by the applicant's failure to provide the required

materials, it would be reasonable to make the applicant withdraw the application and reapply when he or she has the required information in order.

.0120 Test. Minnesota Statutes, section 326.3331, gives the Board authority to determine by rule the appropriate training to require of private detectives and protective agents. This provision is necessary since all applicants for licenses have a responsibility to know how Minnesota Statutes, sections 326.32 through 326.339, and Minnesota Rules, Chapter 7506, governing private detectives and protective agents, affect their industry. It is also reasonable for the Board to require such a test, because those license holders who are familiar with the Minnesota law are most likely to act within that law in the scope of their jobs. A test written and administered by the Board is reasonable, because the Board is in the best position to evaluate the relevant law and keep informed of any law changes.

.0130 Licensing and qualification. Minnesota Statutes, section 326.3382, specifically lists the contents of the application form. This part expounds on those contents and potential problems with the contents of the application which the Board must be prepared to address fairly and consistently.

Subpart 1. Contingent license. This subpart is necessary to deal with the submission of a reissuance application prior to expiration that, due to applicant omission or error, processing is incomplete at the time of expiration. Since the application was timely, it is reasonable that the license holder be allowed to continue to operate under a license. However, a new license cannot be reissued because the Board cannot be assured that the applicant continues to meet the statutory requirements for licensure. A contingent license allows the license holder to continue operations while finishing the application process. A sixty day limit is given to the contingent license because that should be ample time to correct any problem. If the application is in such a state that sixty days is not adequate, the Board will best serve the public and the industry by not allowing the applicant to continue operating. The fine is reasonable since the applicant who is receiving a contingent license should pay for that privilege and the extra time that the board will be spending on the application.

Subpart 2. Lapsed license. This subpart is necessary to address the potential of a reissuance application being made after expiration or being submitted in an incomplete state and the applicant does not respond Board inquiries to correct omissions. This provision is reasonable because since the application was not able to be reviewed before expiration, the Board cannot be assured that the applicant continues to be meet statutory requirements. Yet instead of

denying the license, the applicant shall cease operations for the sixty day period, apply for reissuance, and resume operations only upon reissuance of the license. The fine is reasonable because the Board will have spent valuable time reviewing a late or incomplete application and corresponding with the applicant. In addition, the fine is meant to deter applicants from disregarding the expiration date or submitting negligent applications.

Subpart 3. Financial responsibility. Minnesota Statutes, section 326.3382, subdivision 3, paragraph (c), gives an applicant a choice of three ways to furnish proof of financial responsibility. This subpart is necessary to elaborate on those three choices so it is clear to an applicant what documents must accompany the application.

Item A. This provision is reasonable so if the applicant chooses to submit a certificate of insurance, the Board will receive the original certificate and a photocopy of the insurance policy so both can be reviewed to confirm that the coverage complies with the requirements of the statute.

Item B. This provision is reasonable so if the applicant chooses to submit a net worth statement, the Board will receive the original statement signed by the applicant so it can be reviewed to confirm the business' net worth meets the statutory minimums.

Item C. This provision is necessary because Minnesota Statutes, section 326.3382, subdivision 3, paragraph (f) allows the submission of an irrevocable letter of credit as proof as financial responsibility.

.0140 Schedule of fees. This part is necessary to specify the fees which Minnesota Statutes, section 326.3386, authorizes the Board to assess. All the fees have been approved by the Commissioner of Finance and sent to the chairs of the House Appropriations and Senate Finance Committees as required. Charging fees for licenses is necessary to cover the costs of issuing licenses and to fund the board which is self-sustaining.

Subpart 1. New applicant fees. This subpart sets out the applicable fees for new applicants. There are two categories of fees, one for private detectives and one for protective agents. The provision stating the fees for the private detectives is slightly higher than the fees for protective agents because the holder of a private detective is also licensed as a protective agent, thus is receiving a dual license. This is not the case with the protective agent license. Such a license holder is not licensed as a private detective.

The fees increase if the applicant is a partnership or a corporation. This gradation is reasonable because it is designed to take the small business entity into consideration. A business that is in a position to be a partnership or corporation is usually a larger business and

can better afford the higher fee. Also considered in setting this fee, was the complexity involved with reviewing the paperwork and forms which are received from partnerships and corporations in comparison to the more simple individual application.

There is an additional administrative fee charged to a new applicant to cover the costs of processing the application. Because the materials submitted would be more extensive, it is reasonable that this fee be higher for a new applicant as opposed to the similar business/division fee for a license holder described in subpart 5.

Subpart 2. License reissuance fees. This subpart sets out the applicable fees for the reissuance of a license. As with the new applicant fees discussed above, the schedule differs for the broader private detective license (A) as compared with the protective agent license (B). In addition, the fees increase depending on number of employees. This gradation is reasonable because the greater the number of employees covered by a license, the more complex the license review becomes. In addition, the fewer the employees the smaller the business, and small businesses must be considered when setting fees.

Due to the nature of many private detective and protective agent businesses; part-time, short term, and seasonal employees are often utilized. This situation could lead to various interpretations of subpart 2 resulting in similarly-sized businesses paying different fees. Therefore, paragraph C is necessary to define employee for the limited use of determining the applicable fee for license reissuance. Subitem (1) counts as one employee each person who regularly works 30 or more hours a week. The 30 hour figure was taken from Minnesota Statutes, section 62E.02, subdivision 8. That section limits the definition of employee under the Minnesota Comprehensive Health Insurance Act by excluding "...one who is employed less than 30 hours per week by that person's present employer...". A logical assumption to draw from that limitation is that one who is employed for less than 30 hours a week is therefore not an employee.

However, the license holder who employs a large number of part-time, short term, or seasonal employees is not always a small business. Therefore that license holder should not benefit by the lower fee unless his or her use of part-time employees is minimal. Subitem (2) is designed to allow the calculation of the part-time hours as a whole and compare them with the "employee" hours in subitem (1). This is done by requiring the license holder to total the short term hours and divide by 1500. The 1500 figure is arrived at by multiplying 30 hours per week times 50 weeks, or an estimate of the minimum total hours per year that an "employee" under subitem (1) would commonly work.

Finally, the license holder will add the number of "employees" with the figure arrived at in subitem (2) to determine which category of license fee he or she will pay. This provision is reasonable because it requires all license holders, no matter their hiring practices, to pay an application fee based on the number of hours they have persons serving the public.

Subpart 3. Designation fee. This provision is taken directly from Minnesota Statutes, section 326.3386, subdivision 3.

Subpart 4. Status fee. This provision is taken directly from Minnesota Statutes, section 326.3386, subdivision 4.

Subpart 5. Business/division fee. This provision is necessary to set out the fee to be paid to the Board for the cost of processing any additional or change of information to an existing license. The fee is reasonable because it is an estimated average cost of copying, mailing, packaging, and time expended to make a minor change or addition.

.0150 Conduct and Ethics. This part sets out standards of conduct to which a license holder must comply. This provision is necessary to put license holders on notice of the standards to which they are held and is reasonable because it states standards that are common practice in the service industries.

Subpart 1. Conflict of interest. This subpart is necessary to assure that license holders will best serve the clients who are hiring them. It is reasonable to put a duty on a license holder to place the service of current clients before the acquisition of additional clients. If serving a prospective client will conflict with the service of a current client, the license holder must forego serving the prospective client.

When the license holder's interest conflicts with the interest of the client, there is a greater potential that the license holder will be unable to provide the best service possible for that particular client. As stated in the general statement above, protection of the clients is a major impetus behind these rules. Putting a duty on a license holder to avoid conflicts of interests will work to protect the client and the reputation of the industry.

Subpart 2. Client responses. This subpart is necessary to inform license holders that the Board will evaluate the manner in which they respond to their clients. The rule has left the time for a response open so cases can be reviewed individually. This individual evaluation is reasonable, because what constitutes a reasonable time will vary depending on the circumstances. Specifying a reasonable

time in the rule could result in harsh treatment of license holder or insensitive reply to clients under some circumstances. Instead the Board, which is made up of persons with knowledge of the industry, can determine what is reasonable by looking at the details of each case.

Subpart 3. Board responses. This provision is necessary to inform the license holders that they are under a duty to respond to the Board. Since the Board has the oversight of license holders as one of their responsibilities it is reasonable to require the license holders to respond within a reasonable time. Again a reasonable time is left for the Board to decide on an individual basis where all applicable details can be considered.

Subpart 4. Unlicensed activities. This provision is necessary to assure that license holders who hire unlicensed persons do so by complying with the requirements of section 326.336 for employment of unlicensed persons. It is reasonable to require license holders to comply with the law that governs an industry that the legislature chose to regulate.

.0160 Complaint Procedures.

This part is necessary as a reference to Minnesota Statutes, section 214.10, which governs the complaint procedures for examining and licensing boards such as the Private Detective and Protective Agents Board. It is reasonable to include this citation in the rule so that everyone is informed of the complaint procedures, including investigation and hearing processes, that the Board will use.

.0170 Penalties.

Subpart 1. Categories of violations. This subpart is necessary to distinguish the seriousness of violations when determining which type of license sanction or administrative penalty to impose on the violator. Setting out categories of violations allows the Board to be consistent and fair when taking disciplinary action against violators.

Item A. This provision defines "serious violation" as it will be used when determining any penalty which may be imposed on violators. It is necessary to define serious violation as the penalty for such a violation differs from those which are deemed not serious. The criteria does not merely include a negative effect but a "substantial adverse effect," therefore requiring the Board to identify a strong and material effect on at least one of the areas including public health, public safety or the integrity of the industry. This criteria is reasonable because the purpose of these rules is to protect those three areas. The greater

the effect violations have on those areas, the more critical it is that such violations are stopped and deterred. Additionally, subpart 2 below specifically sets out guidelines for assigning the category to each violation.

Item B. This provision defines "violation" as it will be used to impose penalties on violators. This definition is necessary to distinguish a violation from a serious violation as defined in subpart 1. It is reasonable that this violation also results from a failure to comply with statute or rule, but whose effect is not as negative nor substantial as a serious violation. The guidelines in subpart 2 will be used to weigh the effect of the violation.

Subpart 2. Assignment of categories. This subpart is necessary to set out the guidelines that the Board must use in determining whether a serious violation or minor violation has been committed.

Item A. This item allows the Board to measure the potential severity of harm that could have resulted from the violation. It is reasonable to allow the Board to weigh potential harm and its severity for a number of reasons. First, the Board is a group knowledgeable in the industry that it is regulating and the purpose of the regulation. Secondly, a violation should be deemed serious if only by providence it did not result in actual harm. If the potential was present to cause substantial harm, that potential must be considered. Only in that way will the penalties truly work to protect the public and the industry.

Item B. It is reasonable and the objective of the rules to consider resulting harm when determining the penalty to impose.

Item C. The culpability of the violator cannot be ignored when imposing penalties and Minnesota Statutes, section 326.3388 requires the Board to consider culpability when imposing a penalty. It is reasonable to impose a severe penalty only if the violator is truly responsible for the violation that occurred.

Item D. Minnesota Statutes, section 326.3388 requires the Board to consider the number of times the violator has failed to comply with law or rule when imposing a penalty. A violator who repeatedly commits minor violations can do as much harm to the public and industry as the violator who commits one serious violation. Additionally, a repeat violator shows little respect for the law or the body which is regulating the industry. The Board needs to treat such violators similarly and this provision will assure that it does.

The final paragraph is necessary to explain how the guidelines will be utilized by the Board when imposing penalties. It is reasonable for the Board to consider the number of factors which apply to the violation because logically the more factors that apply the more serious the

violation. Conversely if only one factor applies, yet that factor is a grievous violation, that factor must be given more weight in determining the category of violation.

Subpart 3. Revocation. Minnesota Statutes, section 326.3387, authorizes the Board to revoke licenses and requires a contested case hearing before revoking. This subpart is necessary to specify that the Board shall revoke for a two year period. This period is reasonable because a revocation is not imposed unless the violation is determined to be serious. A serious violation requires a severe penalty to act as a deterrent. The public and the reputation of the industry is best protected by deterring violations and preventing those who do violate from performing as protective agents or private detectives for two years.

Subpart 4. Suspension. Minnesota Statutes, section 326.3387, authorizes the Board to suspend licenses and requires a contested case hearing before suspending. This provision is necessary to give the Board the ability to determine whether to suspend after determining the severity of the violation by using the factors set out in subpart 2 above. In addition the Board shall determine the suspension period for each violation. Limiting suspensions to a maximum of one year is reasonable. If a violation is so serious that the Board determines that the violator should not practice for more than one year, the violation must be serious and revocation should be imposed. However, suspensions can be less than one year. This is reasonable because violations will differ as to seriousness and the less serious the violation the shorter the suspension period should be. The Board however is not given complete discretion to determine suspension periods, for the factors in subpart 2 above must be considered when determining the degree of seriousness. In addition, because a suspension cannot be imposed until there is a contested case hearing, the administrative law judge acts as a secondary check to assure that the suspension period is reasonable.

Subpart 5. Imposition of fines. Minnesota Statutes, section 326.3388 allows the Board to impose civil fines for violation of law or rules. This provision reasonably requires the Board to determine the seriousness of the violation using the factors set out in subpart 2 so the fine imposed will be appropriate. This part has laid out the scheme to give the Board criteria to rely on when determining severity.

Subpart 6. Amount of fines. Minnesota Statutes, section 326.3387, subdivision 2 (b) permits the Board to impose administrative penalties in excess of \$500. This provision limits such penalties to \$2500 and allows the levying of such a fine only if the violation is serious as defined in

Subpart 1, item A. As per statute, fines between \$500 and \$2500 can be imposed only after a contested case hearing. All serious violations are not necessarily of the same degree, so the schedule of fines allows the Board to levy greater fines against the more serious violations. A violation which is not serious may be fined under Minnesota Statutes, section 326.3388. Logically, the Board will impose fines not to exceed \$499 the amount of which will be determined by the seriousness of the violation. Before any fine is imposed, the factors of subpart 2 will be considered to determine the seriousness of the violation and the appropriate fine.

Subpart 7. Deadline for paying fines. This subpart is necessary to the effectiveness of the imposition of fines. It is reasonable to set a specific deadline for fines to be paid so that all violators are held to the same standard. In addition, a ten day period is sufficient time for a violator to do what ever is necessary to obtain the necessary funds and submit it to the Board. Authorizing the Board to suspend for nonpayment of fines is reasonable because Minnesota Statutes, section 326.3387, allows the Board to suspend for violations of a rule. This also puts the violator on notice that fines must be paid.

Subpart 8. This subpart is to clarify and emphasize the reach of these rules and the Board's penalty authority as noted in Minnesota Statutes, section 326.3388.

.0180 License reinstatement. This part sets out the Board's procedure for reinstating a license that has been revoked or suspended. This part is necessary because license reinstatement is not specified in statute. Additionally, this will assure that all violators are treated similarly.

Subpart 1. Reinstatement following suspension. This subpart sets out the requirements for reinstating a license which has been suspended pursuant to statute and to these rules.

Item A requires that the suspension period imposed under Minnesota Statutes, section 326.3387 and part .0170 be completed before the license can be reinstated. This provision is necessary to support the sanctions imposed under part .0170.

In addition, any other requirement that the Board sets under part .0170 must be satisfied before reinstatement. This provision is necessary to support the Board authority set out in .0170.

Item B is necessary to support the Board authority to impose fines set out in Minnesota Statutes, section 326.3388, and part .0170.

Subpart 2. Reinstatement following revocation. This subpart sets out the requirements for reinstating a license which has been revoked pursuant to Minnesota Statutes, section 326.3387 and to part .0170.

Item A requires that the revocation period imposed under Minnesota Statutes, section 326.3387 and part .0170 be completed before the license can be reinstated. This provision is necessary to support the sanctions imposed under part .0170.

Item B is necessary to support the Board authority to impose fines set out in Minnesota Statutes, section 326.3388, and part .0170.

Item C lists a requirement that is unique to revocation as opposed to suspension due to the definition of revoke. If a licensed is revoked it is annulled or made void, therefore the violator no longer has any license. It is reasonable to require the violator to apply, again meet all requirements and qualifications, and pay the appropriate fee because in reality he or she is applying for a new license.

