

Private Detectives and Security Business

Proposed Title 22
Pennsylvania Consolidated Statutes

General Assembly of the Commonwealth of Pennsylvania
JOINT STATE GOVERNMENT COMMISSION
Harrisburg, Pennsylvania
April 1980

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Private Detective Business in Pennsylvania

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JOINT STATE GOVERNMENT COMMISSION

ROOM 108 -- FINANCE BUILDING
HARRISBURG 17120

April 28, 1980

TO THE MEMBERS OF THE GENERAL ASSEMBLY:

The Joint State Government Commission is pleased to present this report containing the recommendations and proposed legislation of the Task Force on the Private Detective Business in Pennsylvania, authorized under 1978 Senate Concurrent Resolution Serial No. 222.

The Commission expresses appreciation for the valuable contributions of the task force members, ably chaired by Senator James R. Kelley, and of the many individuals who provided suggestions.

Respectfully submitted,

A handwritten signature in cursive script that reads "Fred J. Shupnik".

Fred. J. Shupnik
Chairman

Acknowledgements

The recommendations and legislation contained in this report are based on testimony presented at public hearings in Wilkes-Barre and Pittsburgh and suggestions made by interested persons in response to drafts of the legislation. Those who testified or submitted suggestions are listed below.

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Recommendations

Pursuant to Senate Concurrent Resolution No. 222, adopted November 14, 1978, the Joint State Government Commission established a legislative task force "to study the requirements, operations and procedures of the private detective business in the Commonwealth and assess the need for amendments to 'The Private Detective Act of 1953.'"

The task force with Senator James R. Kelley as chairman conducted a thorough review of existing law, giving particular attention to concerns expressed in the authorizing resolution relating to

- The adequacy of court supervision of the private detective business.
- The compatibility of law enforcement officers serving as private detectives.
- The adequacy of current law in reflecting the needs of law enforcement and the private detective industry.

Statewide Licensing

The task force found that the licensing and regulatory procedures under the 1953 act do not substantially differ from the original authority enacted May 23, 1887 (P.L. 173, No. 107). That legislation, continued in the 1953 act, authorized each court of common pleas to issue a two-year license for the conduct of a private detective business after an investigation by the district attorney into the character and qualifications of the applicant. Currently, over 400 licenses are outstanding in 29 counties, with well over one-third having been issued in Philadelphia and about one-fifth in Allegheny County.

From testimony received at public hearings held by the task force, it became apparent that the various courts have not established uniform practices and standards as to application and renewal procedures, interpretations of the statutory qualifications and enforcement of the regulatory provisions of the act. Specifically, the task force found that in some counties high standards were imposed for issuance of the licenses, perhaps premised upon the objective to minimize the number of practitioners locally. See, for example, Application of Gardner, 6 D.&C.2d 742 (Lehigh Co., 1956), where the court stated, "It has always been the policy of this court to hold the number of detective licenses to a minimum. Now the legislature has adopted the same policy, leaving to the courts only the question of compliance with the legislative requirements."

The task force reviewed the private detective licensing procedures of the states of California, Maryland, Michigan, Minnesota, New Jersey, New York and Ohio. None of these utilize the courts to act as the licensor of private detectives; further, only Pennsylvania issues licenses at the county or local level.

Judges who commented upon draft legislation which would abolish the county-court-licensing authority in favor of a statewide system were nearly unanimous in their approval, as was practically every witness who appeared before the task force. Accordingly, the task force recommends the establishment of a statewide licensing system under the administration of the State Board of Private Detectives and Security Businesses to be created as an independent administrative board in the Department of State under the jurisdiction of the commissioner of professional and occupational affairs.

The Proposed Board

The task force recommends that the proposed State Board of Private Detectives and Security Businesses (see chapter 5 of legislation, pp. 16-18), license or register and regulate all persons and businesses engaging in the private investigative and security industry. The board would be composed of eight members with statutory assurance of five representatives from the activities affected. The powers and duties of the board are consistent with those of the other professional and occupational licensing boards.

Licensees and Registrants

The current law requires an individual, partnership or corporation to have a private detective license in order to engage in specified activities ranging from investigation to watchguard and related security functions. In addition, the act requires each licensee to obtain a criminal history and comparative fingerprint record for each employee upon hiring.

The task force determined to clearly define, by type of activity, the segments of the industry. Since present licensees may engage in investigative or security business or both, it was decided to retain a private detective designation for those who qualify under present law, which is continued in the proposed legislation, except that the experience requirement is extended to five years.

The task force formalized previous practice by requiring registration of licensees' employees who engage in investigative activities, as well as their employees and those of nonlicensees who provide security guard services only. It is expected that a formal registration system will be vastly more efficient since the expensive scrutiny system will not be duplicated on each occasion of employment.

Further, the task force, aware of the findings and recommendations of national study groups,¹ recognized that at least two segments of the industry were sufficiently similar to require inclusion within the scope of the act. Specifically, alarm system businesses, to the extent that the system is integrated into an ongoing public or private response network, are required to be licensed and their employees registered.

1. A Report Prepared by the Private Security Advisory Council to the Law Enforcement Assistance Administration, U.S. Department of Justice, May and August 1976 and June 1977. Private Security, A Selected Bibliography, National Criminal Justice Reference Services, U.S. Department of Justice, March 1978. Private Security, Report of Task Force on Private Security, National Advisory Committee on Criminal Justice Standards and Goals, LEAA, Washington, D.C., 1976. Private Security Standards and Goals--from the Official Private Security Task Force Report, special edition, Anderson Publishing Company, Cincinnati, 1977. Private Police in the United States: Findings and Recommendations, prepared for U.S. Department of Justice, 5 vols., Rand Corp., Santa Monica, Calif., 1971. Criswell, An Examination of Licensing Requirements for Polygraph Examiners in the Fifty States, unpublished thesis, Master of Science, Eastern Kentucky University, December 1979.

(See Section 1102(2), p. 20.) Also private polygraph operators engaged in the detection of deception are brought within the provisions of the legislation. (See Section 1102(1)(ix), p. 19.)

Substantive Law

The task force learned through its public hearings that certain public law enforcement officers were employed part-time in duties which may suggest significant conflicts of interest. Accordingly, the legislation prohibits part-time investigative employment but authorizes part-time security employment if it is approved by the public employer. (See Section 1324(a), p. 28.)

The present practice of obtaining licensure through qualified persons who do not participate full time in the operation of the business is abolished; a qualified person is required to manage each branch or office of the licensee. (See Section 1303, p. 23.)

Concern was expressed over other current practices which tend to obscure the ultimate legal responsibility for the activities of security personnel. The legislation prohibits public police from charging for their services; it also provides for local discretion, and participation by the board, in prescribing the use of public police uniforms when private employment is undertaken. A specific penalty is included to assure that those who terminate employment must return the uniforms and equipment. (See Section 1504(a), p. 35.)

The task force endorsed an industry suggestion that the current \$10,000 bond be replaced by compulsory liability insurance as a condition for engaging in the private detective business. (See Section 1305(b), p. 24.)

Modernization of Law

As noted above, one of the task force assignments was to develop a comprehensive modernization of the relevant laws. Hence, it was decided to organize all of the existing statutes relating to private police into (new) Title 22 of the Pennsylvania Consolidated Statutes. Parenthetically, the task force did not address the state of the statutory authority of public law enforcement. However, see "Analysis and Classification of Law Enforcement Officers in Pennsylvania," Local Government Commission, Harrisburg, May 1979.

As a part of the consolidation, the Lethal Weapons Training Act of October 10, 1974, (P.L. 705, No. 235), as amended November 23, 1976, (P.L. 1155, No. 254), is incorporated into chapter 3 of this title with essentially editorial changes. (See pp. 11-15, and in particular the comments to the various sections which reflect other changes incorporated into the act.)

The current practice of authorizing courts of common pleas to commission private police to act for nonprofit corporations and similar entities is transferred to the board in chapter 31, pp. 38-39. Similarly, the long-standing authority of the Governor to commission railroad and street railway police is codified in chapter 33, pp. 40-42, except that the gubernatorial function is retained.

Other statutes which contain obsolete provisions relating to the appointment of private police or security guards are repealed. (See Section 3, pp. 42-43.)

Transition Provisions

The task force recognized that the implementation of the new statewide licensing and registration system requires a transition period during which time the board would be organized. The effective date of the act is therefore delayed for six months with regard to those persons not previously licensed by the courts. Since this group includes those who are not currently required to apply for licensure or registration, the board is authorized to approve applications in which the licenses are limited to the security business, alarm systems business or polygraph operators. Further, since private detective licenses were issued under varying standards and interpretations of the 1953 act, the board may waive certain disqualifying requirements in the case of current licensees upon public disclosure of its reasons.

Proposed Legislation with Notes and Comments

AN ACT

Amending Title 22 (Detectives and Private Police) of the Pennsylvania Consolidated Statutes, adding provisions relating to detectives and private police and making repeals.

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The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Chapters 1, 2 and 3 of Title 22, act of November 25, 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated Statutes, are repealed.

Section 2. Title 22 is amended by adding parts to read:

TITLE 22
DETECTIVES AND PRIVATE POLICE

Part

- I. General Provisions
- II. Private Detective and Security Business
- III. Private Police

PART I
GENERAL PROVISIONS

Chapter

1. Preliminary Provisions
3. Lethal Weapons Training
5. State Board of Private Detectives and Security Businesses

CHAPTER 1
PRELIMINARY PROVISIONS

Sec.

101. Definitions.

§ 101. Definitions.

Subject to additional definitions contained in subsequent provisions of this title which are applicable to specific provisions of this title, the following words and phrases when used in this title shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Board." The State Board of Private Detectives and Security Businesses.

"Business license." A license to engage in the private detective and security business issued pursuant to the provisions of Subchapter A of Chapter 13 (relating to private detective and security business).

"Commissioner." The Commissioner of the Pennsylvania State Police or the deputy commissioner duly authorized by the commissioner to perform the duties and exercise the powers granted to the commissioner under this title.

"Lethal weapon." A firearm, concealed billy club and any other weapon calculated to produce death or serious bodily harm. The term does not include chemical mace or any similar substance.

"Private detective." The holder of a private detective license issued pursuant to the provisions of Subchapter B of Chapter 13 (relating to private detectives and other security agents).

"Private detective associate." An employee of a private detective business registered pursuant to the provisions of Subchapter C of Chapter 13 (relating to employees of private detectives and security business and privately employed security guards) or who has applied for registration and has been issued a temporary registration which has not expired.

"Private policeman" or "policeman." An individual commissioned under Chapter 31 (relating to private police) to act as a private policeman.

SOURCE: New. "Lethal weapon" is derived from Section 3 of the Lethal Weapons Training Act, 1974, October 10, P.L. 705, No. 235, as amended by the act of November 23, 1976, P.L. 1155, No. 254.

CHAPTER 3
LETHAL WEAPONS TRAINING

- Sec.
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 - 303. Powers and duties of commissioner.
 - 304. Enrollment in program.
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 - 306. Notice of discharge for cause.
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 - 309. Disposition of fees and other moneys.
 - 310. Penalties.

§ 301. Short title of chapter.

This chapter shall be known and may be cited as the "Lethal Weapons Training Act."

SOURCE: This section is derived from Section 1 of the Lethal Weapons Training Act, 1974, October 10, P.L. 705, No. 235.

COMMENT: Chapter 3 represents a codification of the 1974 act, as amended, edited to conform to the consolidated statutes format with only such other changes as are specifically commented upon herein.

§ 302. Education and training program.

(a) Establishment.--An education and training program in the handling of lethal weapons, law enforcement and protection of rights of citizens shall be established and administered or approved by the commissioner in accordance with the provisions of this chapter.

(b) Attendance.--A private detective, private detective associate, security guard and any other person who is required to be licensed or registered under this title or who is employed as a private policeman by a nonprofit organization or entity and commissioned under the provisions of Chapter 31 (relating to private police) and who, as an incidence to his employment, carries a lethal weapon shall be required to attend the program established by subsection (a) in accordance with the requirements or regulations established by the commissioner and, upon satisfactory completion of the program, shall be entitled to certification by the commissioner. This subsection shall not require attendance for guards and watchmen who fulfill the requirements of the appropriate Federal agency for the performance of security guard duties in connection with the construction and operation of a commercial utilization or production facility under the authority of the Federal Atomic Energy Act of 1954.

(c) Limitation on employer participation in program administration.--Except for colleges and universities, no nongovernment employer of a person who incident to his employment carries a lethal weapon shall own, operate or otherwise participate in, directly or indirectly, the establishment or administration of the program.

SOURCE: This section is derived from Section 4 of the Lethal Weapons Training Act, 1974, October 10, P.L. 705, No. 235.

COMMENT: The attendance mandated by this chapter continues the exemption in prior law for public law enforcement personnel and railroad policemen. The former were exempted by the operation of the definition "privately employed agents" which specifically excluded "local, State or Federal Government employees"; this definition is omitted as surplusage since public personnel clearly do not fall within the scope of the provision. The latter were specifically exempted by the amendatory act of November 23, 1976, P.L. 1155, No. 254. Subsection (b) extends the exemption to those guards and watchmen whose employment and training are the subject of rules and regulations of the United States Nuclear Regulatory Commission. See Title 10, Chapter 1, Code of Federal Regulations--Energy, Part 73.

§ 303. Powers and duties of commissioner.

The commissioner shall have the power and duty to:

(1) Implement and administer or approve the minimum courses of study and training for the program in the handling of lethal weapons, law enforcement and protection of the rights of citizens. He may appoint such employees, promulgate such rules and regulations and prescribe such forms as may be necessary for this purpose.

(2) Implement and administer or approve physical and psychological testing and screening of the candidate for the purpose of barring from the program those not physically or mentally fit to handle lethal weapons.

(3) Issue certificates to schools approved by the commissioner and withdraw certificates from those schools disapproved by the commissioner.

(4) Certify instructors pursuant to the minimum qualifications established by the commissioner.

(5) Consult and cooperate with universities, colleges, community colleges and institutes for the development of specialized courses in handling lethal weapons, law enforcement and protection of the rights of citizens.

(6) Consult and cooperate with Commonwealth agencies and agencies of other states and the Federal Government concerned with similar training.

(7) Certify those individuals who have satisfactorily completed basic education and training requirements as established by the commissioner and issue appropriate certificates.

(8) Visit and inspect approved schools annually.

(9) Collect reasonable charges from the students enrolled therein to pay for the costs of the program.

(10) Grant waivers from compliance with the provisions of this chapter to persons who have satisfactorily completed a course of instruction in a training program approved by the commissioner.

(11) Perform all other duties as may be reasonably necessary or appropriate to implement this chapter.

SOURCE: This section is derived from Section 5 of the Lethal Weapons Training Act, 1974, October 10, P.L. 705, No. 235, as amended by the act of November 23, 1976, P.L. 1155, No. 254.

§ 304. Enrollment in program.

(a) Application.--Any person desiring to enroll in the program shall file an application with the commissioner.

(b) Information required.--The application shall be signed and verified by the applicant. It shall include his full name, age, residence, present and previous occupations and such other information that may be required by the commissioner to show the good character, competency and integrity of the applicant.

(c) Fingerprints, photograph and fee.--The application shall be personally presented by the applicant at an office of the Pennsylvania State Police where his fingerprints shall be affixed thereto. The application, together with two current photographs of the applicant and an application fee of \$35, shall be forwarded to the commissioner.

(d) Investigation.--The fingerprints of the applicant shall be examined by the Pennsylvania State Police and the Federal Bureau of Investigation to determine if he has been convicted of a felony or a violation of any provision of law listed in section 1323(b) (relating to qualifications for licensure).

(e) Age.--No application shall be accepted if the applicant is under the age of 18 years.

(f) Authorization.--After the application has been processed and it is determined that the applicant has not been convicted of crimes under subsection (d) and has otherwise satisfied the requirements of this section, the commissioner shall authorize the applicant to enroll in an approved program.

SOURCE: This section is derived from Section 6 of the Lethal Weapons Training Act, 1974, October 10, P.L. 705, No. 235.

COMMENT: Prior law prohibited enrollment in the training program to those persons convicted of a "crime of violence." This act prohibits enrollment to those persons convicted of a felony or other crime specified in Section 1323(b) of this act. Note that conviction includes a plea of guilty or nolo contendere: See Black's Law Dictionary, 5th Ed., p. 301. This act supersedes, and thus repeals by implication insofar as it conflicts with this act, the Criminal History Record Information Act, 18 Pa.C.S. §9124, which provides in general that State agencies, when determining eligibility for licensing, certification, registration or permission to engage in a trade, profession or occupation, may consider convictions of the applicant of crimes but the convictions shall not preclude the issuance of a license, certificate, registration or permit. In this act, however, it is determined that public safety and confidence in security personnel preclude authorizing convicted persons to enroll in a lethal weapons training program, or otherwise to engage in the occupations licensed or registered under this title. See 22 Pa.C.S. §§1322(a), 1323(b), 1342(b)(4) and 1343(b)(4).

§ 305. Certification.

(a) General rule.--Upon receipt of a fee of \$15, the commissioner shall furnish to each person satisfactorily completing the program an appropriate certificate which shall include his photograph.

(b) Possession of certificate.--The certificate shall be carried on the person as identification during all times when on duty or going to and from duty and carrying a lethal weapon.

(c) Duration.--Certification shall be for a period of five years and the renewal fee shall be \$15. Additional training as a condition of renewal shall be required by the commissioner at intervals of not less than five years, unless the commissioner is aware of information which would require specific training prior to renewal. The commissioner shall prescribe the manner in which the certification shall be renewed.

SOURCE: This section is derived from Sections 7 and 8(a) of the Lethal Weapons Training Act, 1974, October 10, P.L. 705, No. 235.

COMMENT: This section mandates additional training as a condition of renewal of the lethal weapons training certificate. This requirement was suggested, but not specifically provided, by prior law.

§ 306. Notice of discharge for cause.

Whenever an employer discharges a certified individual subject to the provisions of this chapter for cause, the employer shall immediately notify the commissioner of the discharge.

SOURCE: This section is derived from Section 8(b) of the Lethal Weapons Training Act, 1974, October 10, P.L. 705, No. 235.

§ 307. Revocation of certificate.

The commissioner may revoke or refuse to renew any certificate issued under this chapter whenever he learns that false, fraudulent or misstated information appears on the original or renewal application or whenever he learns of a change of circumstances that would render an employee ineligible for certification.

SOURCE: This section is derived from Section 8(c) of the Lethal Weapons Training Act, 1974, October 10, P.L. 705, No. 235.

§ 308. Limitation on type of firearms.

No individual certified under this chapter shall carry an inoperative or model firearm while employed and he shall carry only a powder actuated firearm approved by the commissioner. Any violation of this section shall be grounds for the commissioner to revoke the certification.

SOURCE: This section is derived from Section 10 of the Lethal Weapons Training Act, 1974, October 10, P.L. 705, No. 235.

§ 309. Disposition of fees and other moneys.

All fees and other moneys derived from the operations of this chapter shall be paid into the General Fund.

SOURCE: New; consistent with current administrative law and practice.

§ 310. Penalties.

(a) Uncertified persons.--Any person required to obtain a certificate under this chapter who, in the course of his employment, carries a lethal weapon and who fails to comply with section 302(b) (relating to education and training program) or has not obtained a certificate commits a misdemeanor of the third degree.

(b) Failure to carry certificate.--Any person who, in the course of his employment, carries a lethal weapon and who violates section 305(b) (relating to certification) commits a summary offense.

SOURCE: This section is derived from Section 9 of the Lethal Weapons Training Act, 1974, October 10, P.L. 705, No. 235.

CHAPTER 5
STATE BOARD OF PRIVATE DETECTIVES
AND SECURITY BUSINESSES

Sec.

- 501. Creation of board.
- 502. Organization of board.
- 503. Powers and duties of board.
- 504. Proceedings of board.
- 505. Board to keep records.

§ 501. Creation of board.

(a) General rule.--There is hereby created a departmental administrative board in the Department of State to be known as the "State Board of Private Detectives and Security Businesses."

(b) Applicability of certain laws.--The provisions of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929," generally applicable to professional and occupational boards in the Department of State shall likewise be applicable to the State Board of Private Detectives and Security Businesses. Fees set by Part II (relating to private detective and security business) or otherwise set by regulations shall be collected, credited, allocated and generally administered in accordance with the act of July 1, 1978 (P.L.700, No.124), known as the "Bureau of Professional and Occupational Affairs Fee Act."

SOURCE: New; consistent with current administrative law and practice.

§ 502. Organization of board.

(a) Composition.--The State Board of Private Detectives and Security Businesses shall consist of the Commissioner of Professional and Occupational Affairs, two persons who shall be members representing the public at large, and four licensees (at least one of whom is engaged in investigation, at least one of whom is engaged in security and at least one of whom is engaged in alarm services) and one person who represents an employer (other than a licensee) of security guards registered under this title. Members shall be appointed by the Governor with the advice and consent of a majority of the members elected to the Senate and shall serve terms of six years, except that the first appointed members shall serve staggered terms of two, four and six years as determined by the Governor. Vacancies occurring by death or resignation shall be filled by the Governor for the unexpired term.

(b) Quorum and meetings.--Four members shall constitute a quorum. The board shall select from their number a chairman and shall select a secretary who need not be a member of the board. There shall be two stated meetings of the board each year at a place within this Commonwealth as determined by the board for

the transaction of its business but the board may hold other meetings at its discretion and by vote of the majority upon due notice thereof to all members of the board. The board need not meet in person to take official action but may conduct official or unofficial business by telephone or by writing provided it otherwise complies with the act of July 19, 1974 (P.L.486, No.175), referred to as the Public Agency Open Meeting Law.

(c) Compensation and expenses.--Each member of the board, other than the Commissioner of Professional and Occupational Affairs, shall receive actual traveling, hotel, food and other necessary expenses incurred while engaged in the discharge of official duties as well as per diem allowance of \$30. The secretary shall receive reasonable compensation as the board shall determine with the approval of the Commissioner of Professional and Occupational Affairs.

SOURCE: New; consistent with current administrative law and practice.

§ 503. Powers and duties of board.

The board shall have the power and duty to:

(1) Receive, investigate, approve or disapprove applications for and renewals of licenses and registrations required by Part II (relating to private detective and security business).

(2) Conduct all other business reasonably related to the license and registration function of the board.

(3) Revoke, suspend or reinstate licenses and registrations (including the power to revoke or suspend licenses and registrations for nonpayment of fees).

(4) Receive and act upon complaints.

(5) Compel attendance of witnesses and the production of books or records.

(6) Issue orders, or modifications thereof, as may be necessary in connection with proceedings under this chapter and Part II.

(7) Conduct comprehensive studies and investigations as it deems proper and pertinent to the licensing and registration function of the board.

(8) Adopt rules and regulations of professional conduct appropriate to establish and maintain a high standard of integrity, skills and practice in the professions licensed or registered under Part II.

(9) Formulate, adopt, promulgate and repeal such rules and regulations as are deemed necessary to implement the provisions of this chapter and Part II.

SOURCE: New; consistent with current administrative law and practice.

§ 504. Proceedings of board.

In proceedings of the board relating to the license and registration powers and duties, the board shall not be bound by the strict rules of evidence in the conduct of its proceedings but any determinations made shall be found upon sufficient legal evidence to sustain them. The burden of meeting the qualifications for licensing or registration shall be on the applicant. A district attorney who has filed objections shall be considered a party for the purposes of appeal. The right of appeal from decisions of the board shall be in accordance with law.

SOURCE: New; consistent with current administrative law and practice.

COMMENT: As to appeals from decisions of the board, see generally 2 Pa.C.S. Administrative Law and Procedure, and in particular 2 Pa.C.S. §§701-704.

§ 505. Board to keep records.

(a) General rule.--The board shall keep records of its proceedings, especially with relation to the issuance, denial, registration, suspension and revocation of licenses and registrations. All licenses and registrations issued by the board shall be numbered and recorded by the secretary and a file kept for that purpose and such file or record shall be open to public inspection. In all actions or proceedings in any court a transcript of any record or any part thereof, which is certified to be a true copy by the secretary, shall be entitled to admission in evidence.

(b) Roster of licensees and registrants.--The board shall maintain a current roster of the names and addresses of all business licensees, private detective licensees, registered private detective associates and registered security guard. The roster shall be open to public inspection.

SOURCE: New; consistent with current administrative law and practice.

PART II
PRIVATE DETECTIVE AND SECURITY BUSINESS

Chapter

11. General Provisions
13. Licenses and Registrations
15. Identification Documents, Uniforms and Equipment
17. Enforcement

CHAPTER 11
GENERAL PROVISIONS

Sec.

- 1101. Short title of part.
- 1102. Applicability of part.
- 1103. Inapplicability of part.
- 1104. Preemption of local regulation.
- 1105. Advisory board.
- 1106. Roster of licensees and registrants.

§ 1101. Short title of part.

This part shall be known and may be cited as the "Private Detective and Security Business Act."

SOURCE: New.

§ 1102. Applicability of part.

This part applies to the private detective and security business which shall include the business of investigator, detective agency and watch, guard or patrol agency and mean, separately or collectively, investigating for hire, reward or any consideration whatsoever and notwithstanding that other functions and services may also be performed for hire or reward, to obtain information or perform services with reference to any of the following matters:

(1) Investigative and related services.--

(i) Crime or wrongs done or threatened against the government of the United States of America or any state.

(ii) The identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation or character of any person, group of persons, association, organization, society, partnership or corporation.

(iii) The credibility of witnesses or other persons.

(iv) The whereabouts of missing persons.

(v) The location or recovery of lost or stolen property.

(vi) The causes and origin of, or responsibility for, fires, libels, losses, accidents or damage or injuries to real or personal property.

(vii) The affiliation, connection or relation of any person, partnership or corporation with any union, organization, society or association, or any official member or representative thereof.

(viii) Persons seeking employment in the place of any person or persons who have quit work by reason of any strike.

(ix) The conduct, honesty, efficiency, loyalty or activities of employees, agents, contractors and subcontractors, including the providing of detection or deception services.

(x) The securing of evidence to be used before any authorized investigating committee, board of award or board of arbitration or in the trial of civil or criminal cases.

(2) Alarm services.--The sales, installation, maintenance, repair, replacement or servicing of alarm systems by which the equipment transmits a signal to a central station, law enforcement agency or fire department; or the furnishing of monitoring or responding services in connection with any alarm signaling devices.

(3) Security services.--Watchmen, guards, private patrolmen or other persons to protect persons or property or to prevent the theft or the unlawful taking of goods, wares and merchandise, or to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, choses in action, notes or other valuable documents, papers and articles of value or to transport such goods or procure the return thereof or the performing of such services.

SOURCE: This section is derived from Section 2(b) of The Private Detective Act of 1953, August 21, P.L. 1273, No. 361.

COMMENT: In addition to the private detective business services set forth in the 1953 act, services now included in the scope of this regulatory act are alarm system sales and installation, clause (2), and detection of deception (polygraph services), clause (1)(ix).

§ 1103. Inapplicability of part.

This part does not apply to:

(1) A detective, officer or employee of the Pennsylvania State Police or a police force of any municipality while engaged in the performance of his official duties but this exclusion does not apply if the police force is furnishing the functions or services for hire or reward or is being reimbursed for its costs by any private person.

(2) A person whose business is exclusively the furnishing of information as to the business and financial standing and credit responsibility of any person.

(3) A person exclusively and regularly employed as a special agent, investigator or adjuster by one employer in connection with the affairs of that employer only.

(4) A charitable or philanthropic society or association duly incorporated under the Laws of this Commonwealth and which is organized and maintained for the public good and not for profit.

- (5) Alarm companies which manufacture and sell alarm equipment to other alarm companies but do not sell to end users.
- (6) Investigators or adjusters for insurance companies.

SOURCE: New; consistent with Sections 2(b) and 15 of The Private Detective Act of 1953, August 21, P.L. 1273, No. 361. The 1953 act contained specific examples of employees not intended to be licensed; i.e., an insurance adjuster, an attorney's investigator, or a common carrier's investigator. These specific exclusions in prior law are continued to the extent that they generally comply with this section.

§ 1104. Preemption of local regulation.

It is the intent of the General Assembly to enact a comprehensive licensing and registration system for the private investigating and security business and thereby preempt this field. All municipal and county ordinances inconsistent with this part or imposing additional duties, fees or different standards shall be invalid.

SOURCE: New.

CHAPTER 13
LICENSES AND REGISTRATIONS

Subchapter

- A. Private Detective and Security Business
- B. Private Detectives and Other Security Agents
- C. Employees of Private Detectives and Security Business and Privately Employed Security Guards

SUBCHAPTER A
PRIVATE DETECTIVE AND SECURITY BUSINESS

Sec.

- 1301. License required.
- 1302. Application for license.
- 1303. Managing agent required for each office.
- 1304. Investigation of applicant.
- 1305. License.
- 1306. Transfer of license to another location.
- 1307. Renewal of license.

§ 1301. License required.

No person shall engage in the private detective business or advertise his or its business to be a private detective business or private security business, notwithstanding the name or title used in describing the business, without having first obtained a business license. A separate license shall be obtained for each location at which an office, branch office, bureau, agency or subagency, is maintained for the conduct of the private detective or private security business.

SOURCE: New; consistent with Section 3 of The Private Detective Act of 1953, August 21, P.L. 1273, No. 361.

COMMENT: By application of the provisions of 22 Pa.C.S. §1102, no person who intends to establish the business of providing investigative and related services, alarm services or security services may do so without first obtaining a business license.

§ 1302. Application for license.

(a) General rule.--Any person intending to conduct a private detective business or other security business shall file with the board a signed and verified application. If the applicant is a partnership, association or corporation, the application shall contain the information required in this section for, and shall be signed and verified by, each individual composing the partnership or association or each principal officer and, unless the stock of the corporation or its ultimate parent corporation is listed on a National Securities Exchange or registered under section 12 of the Federal Securities and Exchange Act of 1934, each shareholder owning more than 5% of the shares of the corporation. The application shall set forth his full name, age, residence, present and previous occupations, the address of the principal place of business and the office, branch office, bureau, agency, subagency for which the business license is desired, and such further information as may be required by the board to show the good character, competency and integrity of the individual. The application shall also contain two photographs and the fingerprints of the two hands of each applicant. The managing agent of the applicant for each location of its offices shall be identified and a copy of his private detective license, or application for license, shall be included.

(b) References.--Each individual or partnership who is an applicant shall be recommended by not less than five reputable citizens of the community in which he resides or for which the business license is desired, who shall certify under oath that he has personally known the individual for a period of at least five years prior to the filing of the application, that he has read the application and believes each of the statements made therein to be true, that the person is honest, of good character and competent and not related or connected to him by blood or marriage.

(c) Additional information for corporation.--In the case of a corporation, the application shall include its name, date and place of incorporation, the amount of its outstanding paid-up capital stock and whether paid in cash or property and, if in property, the nature of the property, and the names of not less than three credit references. In addition, the corporate applicant shall supply a certified copy of the certificate of incorporation.

(d) Death, etc. of member or officer.--Notice of the death, resignation, withdrawal or removal of the managing agent, member of a partnership or association, or any principal officer or shareholder required to sign the application shall forthwith be given in writing to the board and a successor agent, member, officer or shareholder shall file with the board the appropriate information or application.

(e) Branch offices of licensee.--An application by a business licensee for a branch license may incorporate the information previously furnished to the board by reference and shall contain only additional information necessary to conduct the review required by this subchapter.

SOURCE: New; consistent with Section 4 of The Private Detective Act of 1953, August 21, P.L. 1273, No. 361.

§ 1303. Managing agent required for each office.

No business license shall be issued unless the applicant or the managing agent possesses a private detective license and certifies that he will engage full time in the private detective business at the location for which the license is requested.

SOURCE: New.

COMMENT: This section requires that each licensed place of business has at least one licensed private detective at that location on a full-time basis. If the business is that of alarm services or polygraph services, the managing agent may be a person holding a limited license under 22 Pa.C.S. §1322.

§ 1304. Investigation of applicant.

The board shall refer the application to the district attorney of the county where the office or branch office, bureau, agency or subagency will be located. Upon receipt of the application the district attorney shall direct an appropriate investigation of the applicant and shall, within 30 days of receipt of the application, forward to the board a complete written report of the investigative findings and a recommendation as to the disposition of the application. The board shall also obtain through the State Police or otherwise criminal history records, fingerprint comparative information and such other information as it requires.

SOURCE: New; consistent with Section 5 of The Private Detective Act of 1953, August 21, P.L. 1273, No. 361.

COMMENT: This section requires that the board, district attorneys and the State police cooperate to direct an appropriate investigation of the applicant.

§ 1305. License.

(a) Issuance.--If after investigation the board is satisfied of the good character, competency and integrity of the applicant and a period of 45 days from the date of the filing of the application has elapsed, the board shall issue and deliver to the applicant a business license for the premises stated in the application. In the event verified objections to the issuance of a license are filed with the board, he shall hold a public hearing with notice to all interested parties prior to issuing or refusing to issue the license.

(b) Fee and liability insurance.--Prior to the issuance of a business license, the applicant shall pay to the Commonwealth for each license a fee of \$250, and shall file with the board evidence that it has in force a general liability insurance policy in an amount insuring against claims of not less than \$300,000 in the case of personal injuries and \$100,000 in the case of property damage written by an insurance company authorized to do business in this Commonwealth. Each policy shall contain an endorsement that the policy will not be cancelled or modified without notification to the board.

(c) Form.--The business license shall be in a form prescribed by the board and shall specify the full name of the applicant, the location of the principal office, and the office, branch office, bureau, agency or subagency for which the license is issued, the date on which it is issued, the date on which it will expire and the name and residence of each licensed private detective employed by it at that location.

(d) Posting.--The business license shall be at all times displayed in a conspicuous place in the office for which it is issued.

(e) Revocation.--The business license shall be revocable at any time by the board for cause shown. Every license shall be surrendered to the board within 72 hours after its term has expired or after notice in writing to the holder that the license has been revoked. Any licensee failing to comply with any of the provisions of this section commits a misdemeanor of the third degree. Such failure shall be sufficient cause for the revocation of a license.

SOURCE: New.

COMMENT: This section provides for a 45-day waiting period between the filing of the application and issuance of the license to allow adequate time for the mandatory local investigation of the applicant. In the event that objections to the issuance of the license are received by the board, a public hearing is required. Mandatory general liability insurance is required in place of the bonding provision previously required under Section 16 of The Private Detective Act of 1953. Notice of

cancellation of the insurance must be given to the board to provide quick and independent knowledge of the status of a licensee's insurance coverage so that the license can be revoked, if necessary.

§ 1306. Transfer of license to another location.

If a business licensee desires to transfer the license to a place other than that described in it, he shall prior thereto apply to the board for leave to transfer the license. The application for transfer shall describe the premises to which the transfer will be made and the date of transfer. The board shall cause an appropriate investigation to be made and, if he is satisfied, authorize the transfer.

SOURCE New; consistent with Section 10 of The Private Detective Act of 1953, August 21, P.L. 1273, No. 361.

§ 1307. Renewal of license.

A business license shall be renewed biennially by the board upon application at such time prior to expiration and in such form as the board may prescribe and payment of a biennial fee of \$200 and the filing of evidence of insurance as required for the original license. The license shall be renewed without further investigation unless the applicant no longer qualifies for the license or verified objections to the renewal are received by the board prior to issuance. If the board has received information relevant to the renewal, he shall hold a public hearing as provided for in the case of an original application.

SOURCE: New; consistent with Section 11 of The Private Detective Act of 1953, August 21, P.L. 1273, No. 361.

SUBCHAPTER B
PRIVATE DETECTIVES AND OTHER SECURITY AGENTS

Sec.

- 1321. License or registration required.
- 1322. Limited licenses.
- 1323. Qualifications for licensure.
- 1324. Incompatible employment.
- 1325. Application for license.
- 1326. License.
- 1327. Renewal of license.

§ 1321. License or registration required.

No person shall perform any of the functions and services set forth in section 1102 (relating to applicability of part) without having obtained from the board a private detective license or having registered as an associate or as a security guard.

SOURCE: New.

COMMENT: A person who intends to provide the services of a private detective or security guard must procure a license from the State Board of Private Detectives and Security Businesses or register with the board.

§ 1322. Limited licenses.

(a) General rule.--Notwithstanding the prohibition contained in section 1321 (relating to license or registration required), a person, partnership, association or corporation may perform polygraph and alarm services defined in section 1102(1)(ix) or (2) (relating to applicability of part) providing he or it applies to the board for a limited license. This limited license may be granted by the board notwithstanding that the applicant does not meet the experience qualifications of section 1323(a) (relating to qualifications for licensure) provided that the applicant meets all other requirements of this title relating to standards of criminal disqualification, incompatible employment, character fitness, personal references, age or other qualifications set by the board.

(b) Defining types of licensees.--The board may define those persons to be licensed under this section as "polygraph operator," "alarm agent" or "alarm business" but the definitions shall be substantially as follows:

"Alarm agent." Any individual employed within this Commonwealth by an alarm business for the purpose of providing installation, service or monitoring of alarm systems.

"Alarm business." Any individual, partnership, association, corporation or other entity engaged in the sale, leasing, installation, maintenance, repair, replacement or servicing of alarm systems as defined in section 1102(2); or the furnishing of monitoring or responding services in connection with any alarm signaling devices. "Alarm business" does not include companies which manufacture and sell alarm equipment to other alarm companies but which do not sell to end users. In addition, "alarm business" does not include any entity on whose premises is installed an alarm system sounding or recording alarm and supervisory signals at a control center on the protected premises and under the supervision of the proprietor of the protected premises.

"Polygraph operator." Any individual employed within this Commonwealth to investigate the conduct, honesty, efficiency, loyalty or activities of employees, agents, contractors and subcontractors by means of detection of deception devices of a mechanical nature.

(c) Regulation of licensees.--All other rights and duties of alarm agents, alarm businesses and polygraph operators shall be as provided by this title. It is the intent of this section only

that alarm agents, alarm businesses and polygraph operators shall be relieved of the experience requirements for licensure as private detectives. The board may set, by rules and regulations, reasonable and appropriate requirements for licensure for these limited licenses.

(d) Limitation on activities of licensees.--Limited licenses issued under this section shall authorize only the conduct of alarm agent, alarm business or polygraph operator and by operation of law prohibit private detective and security business activities.

SOURCE: New.

COMMENT: This section establishes procedures for those persons or businesses intending to provide only alarm or polygraph services not previously licensed. Persons licensed under this section must meet reasonable and appropriate requirements--closely reflecting current occupational standards--to be established by the board. In all other respects, however, licensed alarm businesses and polygraph operators and their employees must comply with the terms of this act.

§ 1323. Qualifications for licensure.

(a) Experience.--No private detective license shall be issued unless the applicant has been regularly employed for a period of not less than five years as a detective, an associate of a licensed private detective, a member of the United States Government investigative service, the Pennsylvania State Police, a municipality with a rank or grade higher than patrolman, or a sheriff. Any employee of a private detective or security business who is not otherwise disqualified under this section or section 1324 (relating to incompatible employment) from obtaining a private detective or security business license may be registered as an associate notwithstanding that he does not possess the experience required under this subsection to obtain a private detective or security business license.

(b) Criminal disqualifications.--

(1) No private detective license shall be issued to any person who has been convicted in this Commonwealth or any other state of a felony or a violation of any of the following provisions of law:

18 Pa.C.S. § 907 (relating to possessing instruments of crime).

18 Pa.C.S. § 908 (relating to prohibited offensive weapons).

18 Pa.C.S. § 2702 (relating to aggravated assault).

18 Pa.C.S. § 3124 (relating to voluntary deviate sexual intercourse).

18 Pa.C.S. § 3503 (relating to criminal trespass).

18 Pa.C.S. § 3921 (relating to theft by unlawful taking or disposition).

18 Pa.C.S. § 3925 (relating to receiving stolen property).

18 Pa.C.S. § 5121 (relating to escape).

Act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act."

(2) The conviction of any other crime in this Commonwealth or any other state may be the basis for denying the issuance or renewal of a license.

(c) Previous revocation.--No private detective license or registration shall be issued to any person whose license or registration has been previously revoked because of conviction of a felony or any of the offenses specified in this section unless the person has received an executive or judicial pardon removing this disability.

(d) Age.--No private detective license shall be issued to a person under the age of 25 years and no registration as an associate or security guard shall be issued to a person under the age of 18 years.

SOURCE: Subsection (a) is new; consistent with Section 4(a) of The Private Detective Act of 1953, August 21, P.L. 1273, No. 361, except the period of prior employment is increased from three to five years. Subsection (b) is derived from Sections 6(b) and 13(a) of The Private Detective Act of 1953. Subsection (c) is derived from Section 13(a) of The Private Detective Act of 1953. Subsection (d) is derived from Section 6(a) of the 1953 act as to the age limit for a license; the age limit for registration as an associate is consistent with other occupations licensed in the Commonwealth.

COMMENT: As to subsection (b), see comment to 22 Pa.C.S. §304.

§ 1324. Incompatible employment.

(a) Certain public officials.--No private detective license shall be issued to a member of a State or municipality police force, constable, probation officer or any individual who holds a public office and who, by virtue of that public office, possess extraordinary police authority, not allowed private persons, for the benefit of the public. In the case of an association, partnership or corporation, no license shall be issued if any individual composing the association or partnership, or corporate officer or shareholder, is so employed or holds such public office. This subsection does not prevent a person from obtaining registration as a security guard if his public employer certifies that service as a security guard during hours when he is not pursuing regular duties is not prohibited.

(b) Employment agency.--No holder of an employment agency license shall be licensed under this chapter. While holding a private detective license under this chapter a licensee shall not simultaneously hold an employment agency license or have any financial interest in or participate in the control and management of any employment agency or any other private detective business. A licensee may own or possess stock in any corporation whose only business is to undertake for hire the preparation of payrolls and the transportation of payrolls, moneys, securities and other valuables or whose only business is to provide or furnish protective or guard services to any Federal agency.

SOURCE: Subsection (a) codifies case law; see Commonwealth v. Gregg, Pa Superior Ct 396 A.2d 797 (1979). Subsection (b) is derived from Section 6(d) of The Private Detective Act of 1953, August 21, P.L. 1273, No. 361.

COMMENT: Subsection (a) sets forth specific incompatible employment as determined in the following cases: Robinson License, 75 D.&C.2d 476 (1976), State or municipal police; Stanley Appeal, 204 Pa Superior Ct 29 (1964), constables; and Commonwealth v. Gregg, Pa Superior Ct 396 A.2d 797 (1979), probation officers. The general test for determining whether a certain public office constitutes incompatible employment is based upon the standard set forth in Commonwealth v. Gregg, supra. These statutory guidelines will enable the board to make the decision approving or rejecting the application. A person otherwise prohibited from licensure may, however, register as a security guard if his public employer so permits.

§ 1325. Application for license.

(a) General rule.--Any person who is qualified to do so may execute and file with the board an application for a private detective license setting forth under oath:

- (1) His full name, age and residence.
- (2) Citizenship.
- (3) The name and address of all employers or occupations engaged in for the three years immediately preceding.
- (4) That he has not been convicted of a felony or of any offense involving moral turpitude or of any of the offenses described in section 1323 (relating to qualifications for licensure).
- (5) That he is not disqualified under section 1323 or section 1324 (relating to incompatible employment) from being licensed as a private detective.
- (6) Such further information as the board may require to show good character, competency and integrity of the applicant.

The application shall be accompanied by a set of fingerprints and two photographs and a license fee of \$100 which shall be nonrefundable.

(b) Investigation of applicant.--The board shall cause an investigation of the applicant in the same manner as section 1304 (relating to investigation of applicant).

SOURCE: New.

§ 1326. License.

(a) Issuance.--If after investigation the board is satisfied of the good character, competency and integrity of the applicant and a period of 45 days from the date of the filing of the application has elapsed, the board shall issue and deliver to the applicant a private detective license. In the event verified objections to the issuance of a license are filed with the board, it shall hold a public hearing with notice to all interested parties prior to issuing or refusing to issue the license.

(b) Form.--The license shall be in a form prescribed by the board and shall specify the full name of the applicant, the location of the principal office, and the location of the office, branch office, bureau, agency or subagency from which the applicant will work, the date on which it was issued and the date on which it will expire.

(c) Posting.--The license shall at all times be displayed in a conspicuous place in the principal office from which the applicant works.

(d) Revocation.--The license shall be revocable at any time by the board for cause shown. Every license shall be surrendered to the board within 72 hours after its term has expired or after notice in writing to the holder that the license has been revoked. Any licensee failing to comply with any of the provisions of this subsection commits a misdemeanor of the third degree. Such failure shall be sufficient cause for the revocation of a license.

SOURCE: New.

§ 1327. Renewal of license.

A license shall be renewed biennially by the board upon application at such time prior to expiration and in such form as the board may prescribe and payment of a biennial fee of \$75. The license may be renewed without further investigation unless the applicant no longer qualifies for the license or verified objections to the renewal are received by the board prior to issuance. If the board has received information relevant to the renewal, it shall hold a public hearing as provided for in the case of an original application.

SOURCE: New.

SUBCHAPTER C
EMPLOYEES OF PRIVATE DETECTIVES AND SECURITY
BUSINESS AND PRIVATELY EMPLOYED SECURITY GUARDS

Sec.

- 1341. Responsibility for employees.
- 1342. Registration of associates.
- 1343. Registration of security guards.
- 1344. Duties of licensee and certain other employers.

§ 1341. Responsibility for employees.

A business licensee shall be legally responsible for the good conduct within the scope of employment in the private detective and private security business of each person employed to assist him. No licensee shall knowingly employ in connection with the private detective and private security business in any capacity any person who has been convicted of a felony or any of the offenses specified in section 1323(b) (relating to qualifications for licensure) or whose private detective license or associate or security guard registration was revoked or application for license or registration denied by the board or by the authorities of any state.

SOURCE: New; consistent with Section 13(a) of The Private Detective Act of 1953, August 21, P.L. 1273, No. 361.

§ 1342. Registration of associates.

(a) Registration required.--No person shall be employed by a business licensee to investigate or obtain information with reference to any of the matters set forth in section 1102(1) (relating to applicability of part) who does not possess a valid registration as a private detective associate unless he has executed and filed with the board an application for registration as provided in this section.

(b) Application for registration.--Any person who is qualified to do so may execute and file with the board an application for registration setting forth under oath:

- (1) His full name, age and residence.
- (2) Citizenship.
- (3) The name and address of all employers or occupations engaged in for the three years immediately preceding.
- (4) That he has not been convicted of a felony or of any offense involving moral turpitude or of any of the offenses described in section 1323 (relating to qualifications for licensure).
- (5) That he is not disqualified under section 1322 or section 1324 (relating to incompatible employment) from being registered as an associate.

(6) Such further information as the board may require to show good character, competency and integrity of the applicant.

The application shall be accompanied by a set of fingerprints and two photographs and a registration fee of \$50 which shall be nonrefundable.

(c) Investigation of applicant.--The board shall cause an appropriate investigation of the applicant, including criminal history record and fingerprint comparative information reports.

(d) Issuance.--If after investigation the board is satisfied of the good character, competency and integrity of the applicant, the board shall issue and deliver to the applicant an associate registration.

(e) Revocation.--The registration shall be revocable at any time by the board for cause shown. Every registration and identification document shall be surrendered to the board within 72 hours after its term has expired or after notice in writing to the holder that the registration has been revoked. Any licensee failing to comply with any of the provisions of this subsection commits a misdemeanor of the third degree. Such failure shall be sufficient cause for the revocation of a registration.

(f) Renewal.--The registration shall be renewed biennially upon forms prescribed by the board and payment of a biennial fee of \$35. The registration may be renewed without further investigation unless the applicant no longer qualifies or verified objections to the renewal are received by the board prior to issuance. If the board has received information relevant to the renewal, it shall hold a public hearing.

SOURCE: New; consistent with 22 Pa.C.S. Ch. 13, Subchapter B (relating to private detectives and other security agents).

§ 1343. Registration of security guards.

(a) Registration required.--No person shall be employed by an alarm business licensee for the purpose of providing installation, service or monitoring of alarm systems, and no person shall be employed by a business licensee or by any person for the purpose of providing watchguard, protective patrol, courier or other services to protect persons or property or any of the services described in section 1102(2) and (3) (relating to applicability of part) who does not possess a valid registration as a security guard unless he has executed and filed with the board an application for registration as provided in this part.

(b) Application for registration.--Any person who is qualified to do so may execute and file with the board an application for registration setting forth under oath:

- (1) His full name, age and residence.
- (2) Citizenship.
- (3) The name and address of all employers or occupations engaged in for the three years immediately preceding.

(4) That he has not been convicted of any felony or of any offense involving moral turpitude or of any of the offenses described in section 1323(b) (relating to qualifications for licensure).

(5) That he is not employed by a state or municipality police force or, if he is so employed, that his public employer does not prohibit him from serving as a security guard during hours other than those when he is pursuing his regular duties.

(6) Such further information as the board may require to show the good character, competency and integrity of the applicant.

The application shall be accompanied by a set of fingerprints and two photographs and a registration fee of \$25 which shall be nonrefundable.

(c) Investigation of applicant.--The board shall cause an appropriate investigation of the applicant, including criminal history record and fingerprint comparative information reports.

(d) Issuance.--If after investigation the board is satisfied of the good character, competency and integrity of the applicant, the board shall issue and deliver to the applicant a security guard registration.

(e) Revocation.--The registration shall be revocable at any time by the board for cause shown. Every registration and identification document shall be surrendered to the board within 72 hours after its term has expired or after notice in writing to the holder that the registration has been revoked. Any licensee failing to comply with any of the provisions of this subsection commits a misdemeanor of the third degree. Such failure shall be sufficient cause for the revocation of a registration.

(f) Renewal.--The registration shall be renewed biennially upon forms prescribed by the board and payment of a biennial fee of \$15. The registration may be renewed without further investigation unless the applicant no longer qualifies or verified objections to the renewal are received by the board prior to issuance. If the board has received information relevant to the renewal, it shall hold a public hearing.

SOURCE: New; consistent with 22 Pa.C.S. §1342.

§ 1344. Duties of licensee and certain other employers.

Prior to allowing an associate or a security guard to perform services, the business licensee or other employer shall verify his registration, or in the case of an applicant for registration, the licensee or employer may issue, in accordance with regulations promulgated by the board, a temporary registration which shall be void if the applicant's employment is terminated for any reason, the registration is refused by the

board, a or after 90 days, whichever first occurs. The licensee or employer shall retain on file a copy of the application and one set of fingerprints until permanent registration of the associate or security guard is verified. If the employment of an associate or security guard is terminated for cause at any time, the licensee or employer shall immediately notify the board.

SOURCE: New.

COMMENT: This section permits the provisional employment of a security guard or associate while that person's application for registration is pending. No person may be employed temporarily or provisionally under this section if his application has previously been denied. See 22 Pa.C.S. §1341.

CHAPTER 15
IDENTIFICATION DOCUMENTS, UNIFORMS
AND EQUIPMENT

Sec.

- 1501. Private detective identification document.
- 1502. Associate and security guard identification card.
- 1503. Responsibility for identification documents.
- 1504. Uniforms and equipment.

§ 1501. Private detective identification document.

Upon the issuance of a private detective license, the board shall also issue an identification document which shall contain his photograph, name and business address, and a metal badge as evidence of authorization pursuant to the terms of this part.

SOURCE: New; consistent with Section 12 of The Private Detective Act of 1953, August 21, P.L. 1273, No. 361.

§ 1502. Associate and security guard identification card.

Upon the issuance of a registration as a private detective associate or security guard, the board shall issue an identification card which shall contain such information as the board shall prescribe.

SOURCE: New; consistent with 22 Pa.C.S. §1501.

§ 1503. Responsibility for identification documents.

(a) General rule.--Each person to whom an identification document, license, registration card and badge has been issued shall be responsible for their safekeeping and shall not lend, let or allow any other person to use, wear or display the license, document, card or badge.

(b) Wearing unauthorized identification card or badge.--No person shall wear or display any license, card, shield or badge of any design or material purporting to authorize the holder or wearer thereof to act as a private detective, associate or security guard, which has not been issued pursuant to the provisions of this part. Any person who violates this subsection commits a misdemeanor of the third degree and any such violation is sufficient cause for revocation of the license or registration.

(c) Loss or destruction.--If it is established to the satisfaction of the board that a license, document, card or badge has been lost or destroyed, the board, upon payment of an appropriate fee, shall issue a duplicate license, document, card or badge for the unexpired portion of the term of the license or registration.

SOURCE: New; consistent with Section 12 of The Private Detective Act of 1953, August 21, P.L. 1273, No. 361.

§ 1504. Uniforms and equipment.

(a) Return when employment terminated.--Any associate or security guard issued a uniform or equipment by his employer whose employment is terminated for any reason who fails or refuses to return the uniform or equipment for any reason within three days after the employment ceases, commits a misdemeanor of the third degree.

(b) Wearing official police uniform.--A member or employee of a public police force shall not wear his official police uniform while performing security services for a private employer unless authorized by the governing authority of the political subdivision by which he is employed.

(c) Uniform standards.--The board may promulgate standards or guidelines relating to the design or color of security guard uniforms so as to assure differentiation of public police and security guard uniforms.

(d) Deceptively similar uniforms.--An associate or security guard shall not wear, nor shall an employer issue, a uniform deceptively similar to a uniform worn by a member of a public police force in or adjacent to the political subdivision in which the security services are being performed.

SOURCE: New.

CHAPTER 17
ENFORCEMENT

Subchapter

- A. General Provisions
- B. Violations and Penalties

SUBCHAPTER A
GENERAL PROVISIONS

Sec.

- 1701. Enforcement and investigations.
- 1702. Subpoenas.
- 1703. Prosecutions.

§ 1701. Enforcement and investigations.

The board, or at his request the Attorney General, and each district attorney shall enforce the provisions of this part and, upon complaint of any person or on his own initiative, shall investigate any suspected violation or the business practices and methods of any applicant or licensee. Each applicant or licensee shall, on request of the board or the district attorney, supply such information as may be required concerning his or its business, business practices or methods.

SOURCE: New; consistent with Section 5(a) of The Private Detective Act of 1953, August 21, P.L. 1273, No. 361.

§ 1702. Subpoenas.

For the purpose of enforcing the provisions of this part and in making investigations relating to any violation thereof and for the purpose of investigating applicants or licensees, the board, the Attorney General and district attorney, or their designee, shall have the power to subpoena any person within his jurisdiction and require the production of any books or papers deemed relevant to the inquiry. Any person subpoenaed who fails to obey the subpoena without reasonable cause or without such cause refuses to be examined or to answer any relevant question commits a misdemeanor of the third degree. The testimony of witnesses shall be under oath and willful false swearing in any such proceeding shall be punishable as perjury.

SOURCE: New; consistent with Section 5(b) of The Private Detective Act of 1953, August 21, P.L. 1273, No. 361.

§ 1703. Prosecutions.

Criminal prosecutions for violation of this part shall be brought by the Attorney General or the district attorney of the county in which the violation occurred.

SOURCE: New; consistent with Section 5(b) of The Private Detective Act of 1953, August 21, P.L. 1273, No. 361.

SUBCHAPTER B
VIOLATIONS AND PENALTIES

Sec.

- 1711. Unfair labor practices.
- 1712. Contingent or percentage fees.
- 1713. Unlicensed activities.
- 1714. False representations.
- 1715. Privileged information and false reports.

§ 1711. Unfair labor practices.

It is a misdemeanor of the third degree for a private detective or any employee of a business licensee knowingly to encourage, aid, commit or participate within or without this Commonwealth in any unfair labor practice.

SOURCE: This section is derived from Section 16 of The Private Detective Act of 1953, August 21, P.L. 1273, No. 361.

COMMENT: This section codifies the specific labor practices made unlawful under prior law.

§ 1712. Contingent or percentage fees.

It is unlawful for a private detective or business licensee to furnish or perform any private detective business service on a contingent or percentage basis, or make or enter into any agreement for furnishing services of any kind or character by the terms or conditions of which agreement the compensation to be paid for the services to the licensee is partially or wholly contingent or based upon a percentage of the amount of money or property recovered or dependent in any way upon the result achieved. A violation of this section may be the basis for denying the renewal of a license.

SOURCE: This section is derived from Section 16 of The Private Detective Act of 1953, August 21, P.L. 1273, No. 361.

§ 1713. Unlicensed activities.

Any person, in violation of the provisions of Subchapter A of Chapter 13 (relating to private detective and security business), who engages in the private detective business without a license commits a misdemeanor of the third degree.

SOURCE: This section is derived from Section 16.1 of The Private Detective Act of 1953, August 21, P.L. 1273, No. 361, as added by the act of October 4, 1978, P.L. 1019, No. 224.

§ 1714. False representations.

If the business licensee falsely represents that a person is or has been in his employ, such misrepresentation shall be sufficient cause for the revocation of his license. Any person who falsely represents that he is or has been a detective or employed by a licensee commits a misdemeanor of the third degree. Any person who files with the board the fingerprints, photographs or application for registration of a person other than the applicant commits a misdemeanor of the first degree.

SOURCE: New; consistent with Section 13 of The Private Detective Act of 1953, August 21, P.L. 1273, No. 361.

§ 1715. Privileged information and false reports.

Any person who is or has been an employee of a business licensee shall not divulge to anyone other than his employer, or as his employer shall direct, any information acquired by him during such employment in respect to any of the work to which he has been assigned. Any employee violating the provisions of this section, or any employee who shall willfully make a false report to his employer in respect to any of such work, commits a misdemeanor of the third degree. The employer of any employee believed to have violated this section shall, without any liability whatsoever upon the employer, inform the board who shall, should the facts and circumstances warrant it, conduct further investigation and refer that matter to the district attorney for appropriate action.

SOURCE: This section is derived from Section 14 of The Private Detective Act of 1953, August 21, P.L. 1273, No. 361.

PART III
PRIVATE POLICE

Chapter

- 31. Private Police
- 33. Railroad and Street Railway Police

CHAPTER 31
PRIVATE POLICE

Sec.

- 3101. Appointment.
- 3102. Oath of office.
- 3103. Powers.
- 3104. Compensation.
- 3105. Termination of appointment.

§ 3101. Appointment.

Any nonprofit organization or entity, including a nonprofit corporation as defined in Part III of Title 15 (relating to corporations not-for-profit), which maintains a cemetery or any

buildings or grounds open to the public, or is organized for the prevention of cruelty to children, aged persons or animals, or conducts agricultural or horticultural exhibitions may apply to the board upon such forms as it shall prescribe for the appointment of specific persons as the applicant may designate to act as private policemen for it. The board after such investigation as it shall deem necessary shall recommend to the Governor the commissioning of such persons as private policemen or advise the applicant of its adverse recommendation and the reasons therefor.

SOURCE: This section is derived from 22 Pa.C.S. §501(a), repealed herein.

COMMENT: This recodified section is expanded to include trusts, estates, etc., which perform comparable functions but are not incorporated.

§ 3102. Oath of office.

Every policeman so commissioned shall, before entering upon the duties of his office, take and subscribe the oath required by Article VI of the Constitution of Pennsylvania. The oath and the commission issued by the Governor shall be recorded in the office for the recording of deeds of each county in which it is intended that the policemen shall act and a copy filed with the board.

SOURCE: This section is derived from 22 Pa.C.S. §501(b), repealed herein.

§ 3103. Powers.

(a) General rule.--Private policemen shall severally possess and exercise all the powers of a police officer in this Commonwealth, in and upon, and in the immediate and adjacent vicinity of, the property of the appointing authority, and in the case of policemen commissioned to act for organizations for prevention of cruelty to persons and animals, shall severally possess and exercise all the powers of a police officer in any county in which they may be directed by their appointing authority to act and may arrest persons for the commission of any offense of cruelty to children, aged persons or animals.

(b) Detention of arrested persons.--The keepers of jails and other places of detention in any county of this Commonwealth shall receive all persons arrested by private policemen for purposes of detention until they are dealt with according to law.

(c) Badge.--Private policemen when on duty shall wear a metallic shield containing the words "Special officer" and the name of the appointing authority.

(d) Weapons.--Policemen so appointed shall not carry a firearm or other weapon either when on duty or off duty unless authorized to do so by other provisions of this title or any other statute.

SOURCE: This section is derived from 22 Pa.C.S. §501(c), repealed herein.

§ 3104. Compensation.

The compensation of the policemen shall be paid by their appointing authority.

SOURCE: This section is derived from 22 Pa.C.S. §501(d), repealed herein.

§ 3105. Termination of appointment.

When any appointing authority no longer requires the services of any policeman, it shall file a notice to that effect, under its corporate or other seal, if any, in the office of each recorder of deeds where the oath and commission of the policeman were recorded and with the board. The recorder of deeds shall note this information upon the margin of the record where the commission and oath were recorded.

SOURCE: This section is derived from 22 Pa.C.S. §501(e), repealed herein.

CHAPTER 33
RAILROAD AND STREET RAILWAY
POLICE

Sec.

- 3301. Appointment.
- 3302. Oath of office.
- 3303. Powers and duties.
- 3304. Compensation.
- 3305. Termination of appointment.

§ 3301. Appointment.

A corporation owning or operating a railroad or street passenger railway in this Commonwealth may apply to the Commissioner of the Pennsylvania State Police upon such forms as he shall prescribe for the appointment of specific persons as the applicant may designate to act as railroad or street railway policemen for it. The commissioner after such investigation as he shall deem necessary shall recommend to the Governor the commissioning of such persons as railroad or street railway policemen or advise the applicant of their adverse recommendations and the reasons therefor. The Governor, upon

such application and recommendation, may appoint such persons to be railroad or street railway policemen, and shall issue to such persons so appointed a commission to act as such policemen.

SOURCE: This section is derived from Sections 1 and 2 of the act of February 27, 1865, P.L. 225, No. 228, and from Sections 1 and 2 of the act of June 7, 1901, P.L. 508, No. 246.

COMMENT: This section codifies the authority of the Governor to commission railroad and street railway police which in the case of the former has existed for 115 years.

§ 3302. Oath of office.

Every railroad or street railway policemen so commissioned shall, before entering upon the duties of his office, take and subscribe the oath required by Article VI of the Constitution of Pennsylvania. The oath and commission issued by the Governor shall be recorded in the office of the Secretary of the Commonwealth, in the county where the registered corporate office or principal place of business is located and a copy filed with the commissioner.

SOURCE: This section is derived from Section 3 of the act of February 27, 1865, P.L. 225, No. 228, and from Section 3 of the act of June 7, 1901, P.L. 508, No. 246.

§ 3303. Powers and duties.

(a) General powers.--Railroad and street railway policemen shall severally possess and exercise all the powers of a police officer in this Commonwealth, in and upon, and in the immediate and adjacent vicinity of, the property of the corporate authority or elsewhere within this Commonwealth while engaged in the discharge of his duties.

(b) Detention of arrested persons.--The keepers of jails and other places of detention in any county of this Commonwealth shall receive all persons arrested by railroad or street railway policemen for purposes of detention until they are dealt with according to law.

(c) Badge.--Railroad and street railway policemen when on duty shall wear a metallic shield containing the words "railroad police" or "railway police" and the name of the authority.

SOURCE: This section is derived from Sections 3 and 4 of the act of February 27, 1865, P.L. 225, No. 228, and from Sections 3 and 4 of the act of June 7, 1901, P.L. 508, No. 246.

§ 3304. Compensation.

The compensation of railroad or street railway policemen shall be paid by their corporate authority.

SOURCE: This section is derived from Section 5 of the act of February 27, 1865, P.L. 225, No. 228, and from Section 5 of the act of June 7, 1901, P.L. 508, No. 246.

§ 3305. Termination of appointment.

When the corporate authority no longer requires the services of any railroad or street railway policemen, it shall file a notice to that effect, under its corporate seal, in the office of the Secretary of the Commonwealth, in the office of the recorder of deeds where the oath and commission were recorded and with the commissioner. The recorder of deeds shall note this information upon the margin of the record where the oath and commission were recorded and thereupon the powers of the policemen shall terminate.

SOURCE: This section is derived from Section 6 of the act of February 27, 1865, P.L. 225, No. 228, and from Section 6 of the act of June 7, 1901, P.L. 508, No. 246.

Section 3. Repeals.

(a) Specific repeals.--The following acts are repealed:

Act of February 27, 1865 (P.L.225, No.228), entitled "An act empowering railroad companies to employ police force."

Act of April 26, 1870 (P.L.1269, No.1166), entitled "An act to authorize the private patrol and watchmen to be commissioned by the mayor of Philadelphia to perform police duty within prescribed limits in said city."

Act of April 9, 1873 (P.L.67, No.45), entitled "An act for the further protection of cemeteries in the state of Pennsylvania."

Act of April 26, 1883 (P.L.14, No.13), entitled "An act for the protection of agricultural and horticultural societies."

Act of June 26, 1895 (P.L.333, No.248), entitled "An act to authorize occupants of real estate in cities and boroughs of the Commonwealth to employ night watchmen, with the approval of the court of quarter sessions of the proper county or of the Director of the Department of Public Safety in any city having such a department, and conferring upon the night watchmen thus employed, all rights, privileges and powers of constables and policemen duly elected or appointed in such cities or boroughs."

Act of June 7, 1901 (P.L.508, No.246), entitled "An act relative to the appointment of police for street passenger railways incorporated under the laws of this Commonwealth."

Act of May 25, 1937 (P.L.799, No.221), entitled "An act prohibiting industrial police from carrying weapons when not on duty; requiring them to leave the same at place of employment; and prescribing penalties."

Act of August 21, 1953 (P.L.1273, No.361), known as "The Private Detective Act of 1953."

Act of October 10, 1974 (P.L.705, No.235), known as the "Lethal Weapons Training Act."

(b) General repeal.--All other acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 4. Transition provisions.

(a) State Board of Private Detectives and Security Businesses.--The Governor shall appoint the members of the State Board of Private Detectives and Security Businesses within 90 days of the effective date of this act and the board shall organize within 30 days after the confirmation of the members.

(b) Extension of existing licenses.--Each person, partnership, association or corporation who holds a valid license issued pursuant to the former provisions of the act of August 21, 1953 (P.L.1273, No.361), known as "The Private Detective Act of 1953," but which license will expire within one year of the effective date of this section shall be deemed to have been granted an extension of that license until one year from the effective date of this section.

(c) Information concerning existing licenses.--Each person, partnership, association or corporation who holds a valid license issued pursuant to "The Private Detective Act of 1953" on the effective date of this act shall send a copy of the license, or all pertinent information thereon, to the board within 60 days of the effective date of this act.

(d) Application for new license.--Each person, partnership, association or corporation who holds a valid license issued pursuant to "The Private Detective Act of 1953" on the effective date of this act and who desires to engage in a business or profession regulated under this act must make application therefor to the board before 90 days of the expiration of that license or before 90 days of the expiration of that license as extended by subsection (b) of this section. If it appears to the board that the person, partnership, association or corporation making application under this subsection does not meet the substantive qualifications of 22 Pa.C.S. § 1323(a) (relating to qualifications for licensure) or 1324 (relating to incompatible employment) the board may nonetheless issue the license upon a public statement of its reasons therefor.

(e) Certain applications for license limited to security services.--Any person who prior to the effective date of this act is engaged in providing security services as defined in 22 Pa.C.S. §1102(3) (relating to applicability of part) and has been so engaged in a supervisory capacity for at least five years but does not meet the substantive qualifications of 22 Pa.C.S §1323(a), may apply to the board for the issuance of a license limited to the services as defined in §1102(3), and a limited license may be issued in accordance with the provisions of §1322 (relating to limited licenses).

Section 5. Appropriation.

The sum of \$100,000 or as much thereof as may be necessary, is hereby specifically appropriated to the Department of State for the use of the Bureau of Professional and Occupational Affairs to defray costs and expenses on account of the State Board of Private Detectives and Security Businesses. This sum shall be expended and accounted for in accordance with the act of July 1, 1978 (P.L.700, No.124), known as the "Bureau of Professional and Occupational Affairs Fee Act," and shall be credited against sums subsequently appropriated in accordance with that act.

Section 6. Effective date.

Chapter 5 of Title 22 (relating to State Board of Private Detectives and Security Businesses) and sections 4 (a) and (b) and 5 of this act shall take effect immediately and the remaining provisions shall take effect in six months.

Appendix

ARREST BY PRIVATE CITIZENS AND SECURITY GUARDS

This appendix outlines the circumstances surrounding the right of a private citizen or security guard to make an arrest. These "citizens' arrests" are frequently the subject of legal controversy. The General Assembly has codified the law of arrest and associated issues--e.g., the use of force in the protection of self, other persons and property--in Chapter 5 of the Crimes Code. Retail theft, the area most likely to be the subject of a private arrest (18 Pa.C.S. §3929), is discussed on p. 47.

Right to Arrest

Any private citizen is privileged to arrest without a warrant when a felony has actually been committed or there are reasonable grounds to suspect a felony. Commonwealth ex rel. Duncan v. Rundle, 227 A.2d 659, 424 Pa 385 (1967). See also, Commonwealth ex rel. Garrison v. Burke, 378 Pa 344 (1954). The reasonableness of the private person's suspicion is to be determined by review of the facts of the particular case. Furthermore, he must act promptly or within a reasonable time after the event or the right to make the arrest is forfeited.

Use of Force

Any private person who makes or assists in making a lawful arrest is justified in using any force which he would be authorized to use if he were summoned or directed by a peace officer to make such an arrest. This "justifiable force," a subjective standard, is defined as any force the actor believes necessary to effect the arrest or to defend himself or another from bodily harm during the arrest (18 Pa.C.S. §508(b)).

Deadly Force--Case law and the Pennsylvania Crimes Code differ on the justifiable use of deadly force by a private citizen in making an arrest. According to the Crimes Code, the use of deadly force by a private citizen to effect an arrest is never justified. However, the use of deadly force is still justified when the citizen believes that in the course of an attempted arrest such force is necessary to prevent death or serious bodily injury to himself or another person (18 Pa.C.S. §508).

Case law, on the other hand, justifies the use of deadly force by a private citizen in making an arrest if the following requirements have been fulfilled:

1. Necessity--The citizen must believe deadly force is immediately necessary to effect the arrest.
2. Fresh pursuit--The citizen must be in fresh pursuit of the felon before he may use deadly force to subdue him.
3. Notice--The citizen must inform the person whom he is seeking to arrest of his purpose before using deadly force.
4. Type of felony--The citizen is arresting a person who has committed one of the following felonies: treason, murder, voluntary manslaughter, mayhem, arson, robbery, common law rape, common law burglary, kidnapping, assault with intent to murder, rape or rob, or a felony which normally causes or threatens great bodily harm. Commonwealth v. Chermansky, 242 A.2d 237, 430 Pa 170 (1968).
5. Felony-in-fact--A felony has actually been committed; reasonable suspicion is not sufficient justification (78 Dick.L.Rev. 115 (1973)).

In addition, a private detective has no greater rights than a private citizen in making an arrest, and the court strongly disapproves of a private detective's being in any way connected with the actual arrest of individuals charged with a crime. Application of Niehoff, 9 D.&C.2d 410, 48 Berks 286 (1956).

Force to Prevent Escape--A private person who has an arrested person in his custody has the same justification for the use of such force to prevent the escape of the arrested person from custody as he would have if he were arresting such person (18 Pa.C.S. §508(c)). Therefore, according to the Pennsylvania Crimes Code, a private citizen would never be justified in using deadly force to prevent the escape of an arrested person in his custody.

Penalties for Unlawful Arrest or Detention

The three possible circumstances of unlawful arrest or detention involving punishments are

1. Unlawful restraint--A person commits a misdemeanor of the first degree (maximum fine, \$10,000/maximum imprisonment, five years) if he knowingly restrains another unlawfully in circumstances exposing him to risk of serious bodily injury (18 Pa.C.S. §2902).
2. False imprisonment--A person commits a misdemeanor of the second degree (maximum fine, \$5,000/maximum imprisonment, two years) if he knowingly restrains another unlawfully so as to interfere substantially with his liberty (18 Pa.C.S. §2903).
3. Official oppression--Any person purporting to act in an official capacity who knowingly subjects another to an illegal arrest or detention is guilty of a misdemeanor of the second degree (18 Pa.C.S. §5301).

Detention for Retail Theft

Any merchant, his employee or agent under contract, who has probable cause to believe retail theft has occurred or is occurring on or about the retail establishment and who has probable cause to believe a specific person has committed or is committing retail theft may detain the subject for a reasonable time and in a reasonable manner on or off the premises for any of the following purposes:

1. To obtain the suspect's identity.
2. To verify the suspect's identity.
3. To determine if the suspect has unpurchased merchandise of the retail establishment in his possession.

If such merchandise is found, the employer, employee or agent may recover the merchandise, inform a peace officer and/or institute criminal proceedings against the suspect (18 Pa.C.S. §3929).

Such detention will not impose civil or criminal liability upon the actor so detaining. In addition, a lower court has held that no Miranda warnings are required prior to interrogation by a private security officer employed by the retail establishment and suppression of a confession given under such circumstances by reason of the absence of such warnings will be refused. Commonwealth v. Green, 63 D.&C.2d 388 (1973).

