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312 Rosa L. Parks Avenue, 8th Floor Tennessee Tower
Nashville, TN 37243
Phone: 615-741-2650
Fax: 615-741-5133
Email: sos.information@state.tn.us

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Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205

Agency/Board/Commission: Tennessee Private Investigation and Polygraph Commission
Division: Division of Regulatory Boards
Department of Commerce and Insurance
Contact Person: Andrew H. Simpson
Address: Davy Crockett tower, 5th Floor
500 James Robertson Pkwy.
Nashville, TN
Zip: 37243
Phone: (615) 253-7979
Email: andrew.simpson@state.tn.us

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables. Please enter only ONE Rule Number/RuleTitle per row)

Chapter Number	Chapter Title
1175-01	General Provisions
Rule Number	Rule Title
1175-01-.03	Finger Printing
1175-01-.11	License Fees

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Chapter 1175-01
General Provisions

Amendments

Paragraph (1) of rule 1175-01-.03 Finger Printing is amended by deleting the text of the paragraph in its entirety and substituting instead the following language so that, as amended, paragraph (1) shall read:

- (1) An applicant shall furnish the Commission with three (3) sets of classifiable fingerprints with his or her application for the purpose of allowing the Commission to forward the fingerprints to the Tennessee Bureau of Investigation (TBI) and Federal Bureau of Investigation (FBI) as required by Tenn. Code Ann. § 62-26-208. An applicant shall be deemed to have furnished the Commission with three (3) sets of classifiable fingerprints if he or she causes a private company contracted by the State to electronically transmit the applicant's classifiable prints directly to the TBI and FBI and to forward a classifiable hard copy of the applicant's fingerprints to the Commission on standard TBI/FBI applicant cards. The Commission shall notify every applicant in writing of the name, address and telephone number of any company contracted by the State to provide such a service. All private investigator and private investigation company applicants shall comply with the following requirements regarding payment for the fingerprinting service:
 - (a) All sets of classifiable fingerprints required by this rule shall be furnished at the expense of the applicant.
 - (b) If the applicant chooses to request that the Commission process the fingerprint cards, then the applicant shall submit three (3) sets of classifiable fingerprints on cards provided by the Commission, with his or her application, for processing through the TBI and FBI. The applicant shall pay to the Commission all processing fees established by the TBI and FBI.
 - (c) If the applicant chooses to use the services of a company that has contracted with the state to provide electronic fingerprinting service, then the applicant shall make the arrangements for the processing of his or her fingerprints with the company directly and shall be responsible for payment of any fees associated with processing of fingerprints to the respective agency.
 - (d) In the event the State no longer contracts with any company to provide an electronic fingerprinting service, then the applicant shall submit three (3) classifiable TBI/FBI fingerprint cards with his or her application and shall pay the Commission all processing fees established by the TBI and FBI.
 - (e) Applicants shall in all cases be responsible for paying application fees as established by the Commission regardless of the manner of fingerprinting the applicant chooses.

Authority: T.C.A. §§62-26-205, 62-26-208, and 62-26-303.

Paragraph (2) of Rule 1175-01-.03 Fingerprinting is amended by deleting the text of the paragraph in its entirety and substituting instead the following language so that, as amended, paragraph (2) shall read:

- (2) In the event that an applicant furnishes unclassifiable fingerprints or fingerprints that are unclassifiable in nature to the Commission, or the Tennessee Bureau of Investigation (TBI) or

Federal Bureau of Investigation (FBI), the Commission may refuse to issue the requested license. For the purposes of this rule, "unclassifiable fingerprints" means that the electronic scan or the print of the person's fingerprints cannot be read and therefore cannot be used to identify the person. Should an applicant's fingerprints be rejected by the TBI or FBI, the applicant shall pay any fees assessed by the TBI or FBI for resubmission.

Authority: T.C.A. §§62-26-205, 62-26-208, and 62-26-303.

Paragraph (1) of Rule 1175-01-.11 License Fees is amended by deleting the text of the paragraph in its entirety and substituting instead the following language so that, as amended, paragraph (1) shall read:

- (1) The fees for licenses and applications are as follows:
- | | |
|---|-----------|
| Application fee for private investigator | \$200.00 |
| Investigation company application fee: | |
| Number of private investigators employed by company: | |
| Sole practitioner | \$250.00 |
| Two to five (2-5) employees | \$500.00 |
| Over five (5) employees | \$1000.00 |
| Application fee for branch office | \$100.00 |
| (when the branch office is not included in the original company application). | |
| Private Investigator license | \$100.00 |
| Investigation company license fee: | |
| Number of private investigators employed by the company: | |
| Sole practitioner | \$125.00 |
| Two to five (2-5) employees | \$250.00 |
| Over five (5) employees | \$500.00 |
| Branch company office license | \$100.00 |

Authority: T.C.A. §§62-26-204, 62-26-208, and 62-26-303.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Janice D. Holt	X				
David W. Horton	X				
Minnie Ann Lane			X		
Audrey J. Moore	X				
Paul Ritch	X				
David L. Schenkel		X			
Kendall Shull	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Private Investigation and Polygraph Commission on 06/24/2008, and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 07/31/2008

Notice published in the Tennessee Administrative Register on: 08/15/2008

Rulemaking Hearing(s) Conducted on: (add more dates). 09/19/2008

Date: 6-19-09

Signature: [Handwritten Signature]

Name of Officer: Andrew H. Simpson

Assistant General Counsel for Regulatory Boards,

Title of Officer: Department of Commerce and Insurance

Subscribed and sworn to before me on: 6/19/09

Notary Public Signature: [Handwritten Signature]

My commission expires on: 5/6/2012



All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

RE Cooper

Robert E. Cooper, Jr.
Attorney General and Reporter

9-11-09

Date

Department of State Use Only

Filed with the Department of State on:

10/7/09

Effective on:

~~*1/5/10*~~

Tre Hargett

Tre Hargett
Secretary of State

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PUBLICATIONS

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

The Commission received one (1) written comment and five (5) comments were received during the public hearing.

There was one (1) written comment submitted via email prior to the rulemaking hearing. Brent Schmittou of Investigate, Inc., submitted a written comment to express his concern regarding the proposed increase in private investigator renewal fees. Mr. Schmittou suggested that renewal fees for private investigators should not be increased because the Commission already operates within its budget and does not need to make a profit; there was no response from the Commission regarding Mr. Schmittou's comment. Mr. Schmittou made no objection in his written comment regarding the Commission's proposed increase in the private investigator license application fee. The Commission agrees that the increase in renewal fees for private investigators is unnecessary. However, the Commission believes that the increase in the private investigator license application fee is necessary to generate revenue and adequately fund the Commission.

There were five (5) comments received during the public hearing. Robert K. Dawson came before the Commission to comment on the proposed rules regarding license and renewal fee increases. Mr. Dawson, after distributing financial spreadsheets to the Commission members, explained that the Commission had a substantially high reserve balance, thus making the renewal fee increases unnecessary. Mr. Dawson made no public comment regarding the Commission's proposed increase in private investigator license application fees. In response to Mr. Dawson's comments, the Commission agreed that the proposed increase in renewal fees was unnecessary. However, the Commission believes that the increase in the private investigator application fee is necessary to generate revenue and adequately fund the Commission.

Charles C. Cope, representing the Tennessee Association of Investigators, came before the Commission to discuss his concern regarding the proposed increase in private investigator renewal fees. Mr. Cope stated that the increase in renewal fees was unnecessary given the downward state of the economy; there was no response from the Commission regarding to Mr. Cope's comment. Mr. Cope made no public comment regarding the Commission's proposed increase in private investigator license application fees. The Commission agrees that the increase in renewal fees for private investigators is unnecessary. However, the Commission believes that the increase in the private investigator application fee is necessary to generate revenue and adequately fund the Commission.

Walt Valentine, president of the Tennessee Association of Licensed Private Investigators, came before the Commission to comment on the proposed increase in renewal fees for private investigators. Mr. Valentine suggested to the Commission that the proposed renewal fee increase should be consistent with other fee increases. Mr. Valentine also stated to the Commission his concern with the Commission's alleged surplus in its reserve balance. Mr. Valentine made no public comment regarding the Commission's proposed increase in private investigator license application fees. There was no response from the Commission regarding Mr. Valentine's comments. The Commission agrees that the increase in renewal fees for private investigators is unnecessary. However, the Commission believes that the increase in the private investigator application fee is necessary to generate revenue and adequately fund the Commission.

O. Bobby Brown came before the Commission to discuss the number of licensed private investigators and private investigation companies in the State of Tennessee and his concern regarding the proposed increase in renewal fees for private investigators. Mr. Brown made no public comment regarding the Commission's proposed increase in private investigator license application fees. The Commission stated that there are approximately 550-600 licensed companies and between 1100-1200 licensed private investigators in the State of Tennessee. The Commission agrees that the increase in renewal fees for private investigators is unnecessary. However, the Commission believes that the increase in the private investigator application fee is necessary to generate revenue and adequately fund the Commission.

Claudia Brown came before the Commission to discuss her opposition to the proposed increase in renewal fees. Ms. Brown stated that she had some ethical concerns regarding the justification for proposing an increase in renewal fees for private investigators. Ms. Brown made no public comment regarding the Commission's proposed increase in private investigator license application fees. There was no response from the Commission regarding Ms. Brown's comments. The Commission agrees that the increase in renewal fees for private investigators is unnecessary. However, the Commissioner believes that the increase in the private investigator application fee is necessary to generate revenue and adequately fund the Commission.

Regulatory Flexibility Addendum

Pursuant to Public Chapter 464 of the 105th General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

Economic Impact Statement:

1. Types and estimated number of small businesses directly affected:

No small business will be directly affected by these rules.

2. Projected reporting, recordkeeping, and other administrative costs:

There are no additional projected reporting, recordkeeping, or other administrative costs associated with these proposed rules.

3. Probable effect on impacted small businesses and consumers:

There will be no impact on small businesses and consumers.

4. Less burdensome, intrusive, or costly alternative methods:

There are no known less burdensome, intrusive, or costly alternative methods.

5. Comparison with federal and state counterparts:

These rules appear to comport with other similar state and federal laws.

6. Effect of possible exemption of small businesses:

There will be no exemptions created by these rules.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The Commission amended its rules in regards to the submission of fingerprints by private investigator applicants, and an increase in private investigator application fees.

1. The rules of the Alarm Systems Contractors Board are amended to reflect the following:

Rule 1175-01-.03 Finger Printing. The rule was amended to place sole responsibility on the private investigator applicant for payment of all fees related to the processing of fingerprinting, including fees assessed for resubmission of fingerprints if rejected by the Tennessee Bureau of Investigation (TBI) or Federal Bureau of Investigation (FBI). The old rule authorized the Commission to pay fingerprinting processing fees to the TBI and/or FBI if the applicant chose to send his or her classifiable fingerprints directly to the Commission. The old rule also failed to state which party must pay for the fees assessed for resubmission of fingerprints if rejected by the TBI or FBI.

Rule 1175-01-.11 License Fees. The rule was amended to increase the private investigator application fee from \$150.00 to \$200.00.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

The proposed amendments and new rules of the Board are made pursuant to Tenn. Code Ann. § 62-26-303.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The amendments to the Private Investigation and Polygraph Commission rules will affect private investigator applicants. A Notice of Rulemaking Hearing was filed on July 31, 2008, and published in the August 2008 Tennessee Administrative Record. A public hearing was held on September 19, 2008.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

I am unaware of any opinion of the attorney general or any judicial ruling which directly relates to these rules.

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two

percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

These rules are expected to have no fiscal impact on the Department.

- (F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Cody Vest, Executive Director of the Tennessee Alarm Systems Contractors Board, and Andrew H. Simpson, Assistant General Counsel for Regulatory Boards, have substantial knowledge and understanding of these rules.

- (G)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Andrew H. Simpson, Assistant General Counsel for Regulatory Boards, Department of Commerce and Insurance.

- (H)** Office address and telephone number of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Department of Commerce and Insurance, Office of Legal Counsel, 500 James Robertson Parkway, 5th Floor, Davy Crockett Tower, Nashville, Tennessee 37243, (615) 253-7979.

- (I)** Any additional information relevant to the rule proposed for continuation that the committee requests.