

BEFORE THE BOARD OF PRIVATE SECURITY
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 24.182.301 definitions,)	PROPOSED AMENDMENT
24.182.401 fee schedule, 24.182.420)	
firearms, 24.182.421 requalification,)	
24.182.501 application, 24.182.503)	
experience requirements, 24.182.505)	
written examination, 24.182.507)	
temporary permit, 24.182.511 trainee,)	
24.182.520 firearms licensure, and)	
24.182.2301 unprofessional conduct)	

TO: All Concerned Persons

1. On April 5, 2010, at 9:00 a.m., a public hearing will be held in room 430, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Private Security (board) no later than 5:00 p.m., on March 30, 2010, to advise us of the nature of the accommodation that you need. Please contact Susan Wevley, Board of Private Security, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2334; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdp@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.182.301 DEFINITIONS ~~As used in Title 37, chapter 60, MCA, and this chapter, the following definitions apply:~~

(1) and (2) remain the same.

(3) remains the same but is renumbered (4).

(3) "POST" means the Montana Public Safety Officer Standards and Training Council.

AUTH: ~~This rule is advisory only, but may be a correct interpretation of the law,~~ 37-1-131, 37-60-202, MCA

IMP: 37-60-101, 37-60-103, 37-60-105, 37-60-202, 37-60-303, MCA

REASON: The board determined it is reasonably necessary to amend this rule by adding the definition for the Montana Public Safety Officer Standards and Training

Council or POST. The board is amending rules within this rulemaking project that include the abbreviated term.

At this time the board is also striking disclaimer language from the rulemaking authority citation, which was discovered during a review of the rules. The board determined that the advisory disclaimer likely applied to some interpretive definitions that are no longer included in this rule. The board concluded that since clear rulemaking authority exists for the board to implement statutes through the three existing definitions as well as the new definition proposed in this notice, the disclaimer language does not apply and is now unnecessary. Although the disclaimer language is not generally set forth in rule notices, the board determined it is reasonable and necessary to include it so the public is aware of the language and its removal.

24.182.401 FEE SCHEDULE (1) and (1)(a) remain the same.

(i) Company	\$200 <u>225</u>
(ii) Resident manager	400 <u>150</u>
(iii) Security guard, alarm installer, or alarm response runner	25 <u>75</u>
(iv) Branch office	25 <u>75</u>
(b) Private investigator	200 <u>225</u>
(c) Private investigator trainee	400 <u>125</u>
(d) Fire investigator	200
<u>(d) Process server</u>	<u>75</u>
(e) Certified firearms instructor	400 <u>125</u>
(f) Armed status <u>endorsement</u>	25 <u>30</u>
(2) and (2)(a) remain the same.	
(i) Company	400 <u>175</u>
(ii) Resident manager	75 <u>100</u>
(iii) Security guard, alarm installer, or alarm response runner	45 <u>75</u>
(iv) Branch office	25 <u>75</u>
(b) Private investigator	400 <u>150</u>
(c) Private investigator trainee	45 <u>75</u>
(d) Fire investigator	100
<u>(d) Process server</u>	<u>75</u>
(e) remains the same.	
(f) Armed status <u>endorsement</u>	25 <u>30</u>
(3) through (3)(b) remain the same.	
(c) Changes of employer, <u>supervisor</u> , address, or name	10
(d) List of licensees for continuing education purposes only	40
(e) (d) Training program certification (application and renewal)	50
<u>(4) Examination fees are as follows:</u>	
<u>(a) Process server</u>	<u>25</u>
<u>(b) All other exams</u>	<u>20</u>

~~(4)~~ (5) Fees for applicant fingerprint checks are set by the FBI and Montana Department of Justice, and are subject to change. Current fee amounts for fingerprint checks are available at the ~~board office~~ Montana Department of Justice.

(5) and (6) remain the same but are renumbered (6) and (7).

AUTH: 37-1-134, ~~37-1-141~~, 37-60-202, MCA

IMP: 25-1-1104, 37-1-134, 37-1-141, 37-60-202, 37-60-304, MCA

REASON: The 2009 Montana Legislature enacted Chapter 194, Laws of 2009 (House Bill 354), an act eliminating the definition of and references to fire investigators in laws governing private investigators and private security, eliminating the need for a separate fire investigation license, and including investigation of fires among a licensed private investigator's activities. The bill was signed by the Governor on April 9, 2009, and became effective October 1, 2009. The board determined it is reasonably necessary to amend this rule and ARM 24.182.503 to implement the legislation by eliminating fees and licensure requirements previously associated with the fire investigator license.

The 2007 Montana Legislature enacted Chapter 405, Laws of 2007 (Senate Bill 209), an act transferring the regulation of process servers to the board. The bill was signed by the Governor on May 3, 2007, and became effective July 1, 2007. The board is amending this rule to set commensurate fees for process server examination, initial registration, and renewal registration, which were previously set in statute and repealed by the legislation. The board estimates these new fees will affect approximately 195 persons and result in a \$7,270 increase in annual revenue.

After considerable review and discussion of the board's budget and income, the board determined that it is reasonably necessary to make the proposed fee changes to comply with the provisions of 37-1-134, MCA, and to keep the board's fees commensurate with program costs. The department, in providing administrative services to the board, has determined that unless the licensure and renewal fees are increased as proposed by fiscal year 2010, the board will have a negative cash balance and shortage of operating funds by 2010 fiscal year end. The board estimates that approximately 2308 persons will be affected by the proposed fee changes and annual revenue will be increased by \$78,960.

The board is amending (3) to clarify for licensees that armed status is an endorsement to the security guard and private investigator licenses. The board is also amending (3) to delete the fee for licensee lists as the fees are now contained in department rules. The board is striking the renewal provision from (3)(e) because training program certifications are not renewable. If a training program changes, licensees are required to reapply for certification.

The board is adding new (4) to set forth exam fees for process servers and the other license types that require examination by the board. These fees are commensurate with the costs of administering these licensure exams.

Authority cites are being amended to accurately reflect the statutory sources of the board's rulemaking authority.

24.182.420 TYPE OF FIREARM (1) Upon receipt of armed endorsement, a licensee is ~~endorsed and~~ approved by the board to carry the firearm(s) ~~(by make and caliber)~~ with which the licensee is trained or qualified ~~with~~ through a board

~~approved licensed firearms~~ Montana POST certified instructor or a Montana licensed certified firearms instructor (CFI) and a board approved course.

AUTH: 37-1-131, 37-60-202, MCA
IMP: 37-60-202, 37-60-405, MCA

REASON: The board is amending this rule to remove the specification of armed endorsement by firearm make and caliber. The board discussed this issue at length and concluded that the board ensures the public's safety by reviewing and approving safe gun-handling courses. The board determined that endorsement for a particular weapon's caliber or make has nothing to do with safe handling and is amending the rule accordingly.

The board is amending this rule and ARM 24.182.421 in response to questions concerning the meaning of "board approved firearms instructor" and armed endorsement. The board concluded that applicants seeking original armed endorsement and those renewing must qualify and requalify with either a Montana Public Safety Officer Standards and Training Council (POST) certified instructor or a Montana licensed certified firearms instructor (CFI). The board determined that because Montana POST certified instructors focus on Montana laws and regulations in their training, they will better prepare licensees for armed endorsement in Montana than out-of-state POST instructors.

24.182.421 REQUALIFICATION REQUIRED ANNUALLY (1) Licensees with armed status shall requalify annually with a ~~board approved firearms~~ Montana POST certified instructor or a Montana licensed certified firearms instructor (CFI) to maintain their firearm endorsement each year. Requalification will be based upon satisfactory completion of a ~~board approved~~ board approved combat shooting course at least once during each year.

AUTH: 37-60-202, MCA
IMP: 37-60-202, 37-60-303, MCA

24.182.501 REQUIRED INFORMATION FOR APPLICATION (1) Prior to granting any license, the board shall verify the statements made in applications for licensure as deemed necessary to protect the public health, safety and welfare. ~~The board shall notify local law enforcement pursuant to 37-60-304, MCA.~~

(2) and (3) remain the same.

(4) Fingerprints required under Title 37, chapter 60, MCA, shall be submitted to the Federal Bureau of Investigation and the Montana Department of Justice for examination. ~~The board may issue a temporary practice permit upon receipt of the criminal history report from the Montana Department of Justice.~~ Final licensure is granted only following receipt and review of the Federal Bureau of Investigation report and any investigations thereof. A fingerprint report is valid for one year from date of receipt of the report from the Federal Bureau of Investigation.

(5) An applicant for private investigator, or resident manager ~~or~~ qualifying agent must list the names and telephone numbers of three references not related to the applicant by blood or marriage. Two of the three references must be:

(a) through (7) remain the same.

AUTH: 37-1-131, 37-60-202, MCA

IMP: 37-60-304, MCA

REASON: The 2005 Montana Legislature enacted Chapter 126, Laws of 2005 (House Bill 203), an act generally revising laws relating to professional and occupational licensing. The bill was signed by the Governor on March 30, 2005, and became effective July 1, 2005. The board is amending (1) to further implement the legislation by striking a reference to a provision that was deleted from statute in the 2005 legislation, but was inadvertently omitted from previous rulemaking projects.

The board is amending (4) to adjust the rule to current licensure processes. The board notes that the criminal background results from the Montana Department of Justice are now received at the same time as those from the Federal Bureau of Investigation. Since there is no longer a time lag between the two results, the board is amending the rule accordingly to eliminate these temporary permits.

The 2007 Montana Legislature enacted Chapter 502, Laws of 2007 (Senate Bill 153), an act revising professional and occupational licensing laws. The bill was signed by the Governor on May 16, 2007, and became effective October 1, 2007. The board is amending (5) to further implement the legislation by striking a reference to the licensure of qualifying agents, which was deleted from statute in the 2007 legislation, but was missed from previous rulemaking projects.

24.182.503 EXPERIENCE REQUIREMENTS (1) through (3)(a)(i) remain the same.

(ii) employed as a private investigator or having held a certificate of authority to conduct a private investigative business; ~~or~~

(iii) having been an investigator, detective, special agent, or peace officer of a city, county, or state government or of the United States government; ~~or~~

(iv) engaged in the fire investigative business or having been a fire investigator.

(b) and (c) remain the same.

~~(4) Experience requirements for fire investigators are as follows:~~

~~(a) three years full-time experience:~~

~~(i) engaged in the fire investigative business;~~

~~(ii) employed as a fire investigator or having held a certificate of authority to conduct a fire investigative business; or~~

~~(iii) having been a fire investigator or held a similar position acceptable to the board with a city, county, or state government or with the United States government.~~

~~(b) In determining experience qualifications for fire investigator licensure, "three years" means an accumulation of 5400 hours of experience. Self-employment must be verified by tax returns.~~

(5) and (6) remain the same but are renumbered (4) and (5).

(7) (6) A combination of experience, education, and training may be used to meet the experience requirement, but education and training may not exceed 1/2 one-half of the experience required.

AUTH: 37-1-131, 37-60-202, 37-60-303, MCA
IMP: 37-1-131, 37-60-301, 37-60-303, 37-60-304, MCA

24.182.505 WRITTEN EXAMINATION (1) An applicant for licensure as a private investigator, or a resident manager, ~~a firearms instructor, or a security alarm installer~~ shall take and pass a written examination.

(2) through (9) remain the same.

AUTH: 37-1-131, 37-60-202, MCA
IMP: 37-60-303, MCA

REASON: The board determined it is reasonably necessary to amend this rule and remove the written examination as a licensure requirement for firearms instructors and security alarm installers. The board notes that security alarm installers typically do not attend school in their profession, but obtain the experience through individualized on-the-job training. The board concluded that requiring passage of a standardized exam is therefore unrealistic and unnecessary.

The board is amending this rule and ARM 24.182.520 by removing the licensure examination requirement for firearms instructors. Certified firearms instructors (CFIs) are required to successfully complete a firearms instructor training course, which includes a written test, to qualify for licensure. In addition, CFIs must submit all proposed firearms courses for board approval prior to offering the courses. The board concluded that these requirements adequately ensure qualified instructors and courses and an additional licensure exam is unnecessary.

24.182.507 TEMPORARY PERMIT (1) through (3) remain the same.

AUTH: 37-1-131, 37-60-202, MCA
IMP: 37-1-305, 37-60-302, 37-60-309, 37-60-310, ~~37-60-312, 37-60-407~~,
MCA

REASON: Implementation cites are being amended to accurately reflect all statutes implemented through the rule and to delete reference to a repealed statute.

24.182.511 PRIVATE INVESTIGATOR TRAINEE (1) through (4) remain the same.

(5) Trainee licenses may be renewed a maximum of four times.

(6) Private investigator trainees must take the private investigator licensure examination within one year from meeting the age and experience requirements.

(5) remains the same but is renumbered (7).

AUTH: 37-1-131, 37-60-202, MCA
IMP: 37-1-131, 37-60-202, MCA

REASON: The board is amending this rule to address renewals of private investigator trainee licenses. The board notes that some individuals have held trainee licenses for several years, without ever applying to become fully licensed as

a private investigator. The board determined that limiting trainee licenses to five total years and requiring trainees to test for private investigator licensure within a year after meeting the other minimum requirements furthers legislative intent and the public's protection.

Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.182.520 REQUIREMENTS FOR FIREARMS INSTRUCTOR LICENSURE

(1) and (2) remain the same.

~~(3) An applicant must successfully pass any required written examination with a score of 70 percent or higher.~~

(4) and (5) remain the same but are renumbered (3) and (4).

AUTH: 37-60-202, MCA

IMP: 37-1-131, 37-60-202, MCA

REASON: The board concluded that it is not necessary to require a written examination for firearms instructor licensure and is striking the requirement from ARM 24.182.505 in this notice. The board is amending this rule to align with the other rule changes.

24.182.2301 UNPROFESSIONAL CONDUCT ~~The term "unprofessional conduct" as used in 37-1-316 and 37-1-319, MCA, is defined to include the following:~~

(1) through (15) remain the same.

~~(16) Failing to account for funds received in connection with any services rendered or to be rendered; and~~

~~(17) Failing to put in trust or otherwise properly segregate funds in connection with a specific project for a specific purpose; and~~

(18) Failure to respond to a board or department request or inquiry.

AUTH: 37-1-131, 37-1-319, 37-60-202, MCA

IMP: 37-1-131, 37-1-316, 37-60-202, 37-60-401, MCA

REASON: The board is amending this rule by adding to the actions the board considers being unprofessional conduct. The board concluded that a licensee's failure to provide response information to the board can adversely affect the board's ability to timely process applications or complete investigations. The board determined it is reasonably necessary to consider this type of nonresponse as unprofessional conduct. Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule and to provide the complete sources of the board's rulemaking authority. The board is also removing unnecessary lead-in language from the rule in compliance with ARM formatting requirements.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be

submitted to the Board of Private Security, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; by facsimile to (406) 841-2309; or by e-mail to dlibsdp@mt.gov; and must be received no later than 5:00 p.m., April 13, 2010.

5. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at www.privatesecurity@mt.gov. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the board, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2309; e-mailed to dlibsdp@mt.gov; or made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on May 27, 2009, by telephone.

8. Colleen White, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PRIVATE SECURITY
HOLLY DERSHEN-BRUCE,
CHAIRPERSON

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State March 1, 2010