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BILL



ANALYSIS

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Senate Bill 1091 (as reported without amendment)
Sponsor: Senator Alan Sanborn
Committee: Economic Development and Regulatory Reform

(as passed by the Senate)

Date Completed: 3-1-10

RATIONALE

Public Act 146 of 2008 amended the Professional Investigator Licensure Act (formerly the Private Detective License Act) to revise the regulation of professional investigators. Among other things, the 2008 legislation provides that the Act does not apply to a certified public accountant (CPA) acting within the scope of his or her licensed professional practice who does not perform investigative services, including surveillance activities or other activities outside of the scope of his or her licensed professional practice. The Occupational Code governs CPAs' scope of practice. The definition of "practice of public accounting" under the Code does not specifically include such activities as forensic accounting and fraud examination services, but those kinds of services reportedly are performed by some CPAs and their associates. To avoid requiring that CPAs who perform these types of investigative services also to be licensed professional investigators, some people believe that the CPA exception in the Professional Investigator Licensure Act should be revised.

CONTENT

The bill would amend the Professional Investigator Licensure Act to revise an exemption from licensure for certain certified public accountants.

Under the Act, a person, firm, partnership, company, limited liability company, or corporation may not engage in the business of professional investigator for hire, fee, or reward, and may not advertise its business to be that of a professional investigator, without first obtaining a license.

The Act does not apply to certain individuals, including a CPA acting within the scope of his or her licensed professional practice who does not perform investigative services, including surveillance activities or other activities outside of the scope of his or her licensed professional practice. Under the bill, the exemption instead would apply to a CPA or public accounting firm currently licensed, registered, or certified by a regulatory agency of this or any other state, including the CPA's or firm's employees.

MCL 338.824

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The exception for CPAs in the Professional Investigator Licensure Act is too narrow. Under that Act, a CPA does not have to be licensed as a professional investigator as long as he or she is acting within the scope of his or her licensed professional practice and does not perform investigative services. According to written testimony submitted to the Economic Development and Regulatory Reform Committee on behalf of the Michigan Association of Certified Public Accountants, the licensure terms for CPAs in the Occupational Code do not include a specific reference to engaging in such activities as forensic accounting and fraud examination. While those activities are widely accepted practices for some CPAs, they might be interpreted as investigative services under the limited exception for CPAs in the

Professional Investigator Licensure Act. In that case, CPAs who perform those services for clients must secure a professional investigator license, or risk a felony prosecution for practicing as a professional investigator without a license.

The bill would avoid these consequences by extending the CPA exception to any licensed, registered, or certified CPA or public accounting firm. In addition, since CPA candidates and accounting associates working under the supervision of a licensed CPA may assist in fraud examination and forensic accounting tasks, the bill would include employees of the accountant or accounting firm in the CPA exception.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Elizabeth Pratt
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.