

1 **H. B. 2330**

2
3 (By Delegate Michael)

4 [Introduced January 12, 2011; referred to the
5 Committee on the Judiciary.]

6 **FISCAL**
7 **NOTE**

8
9
10 A BILL to amend and reenact §30-18-1, §30-18-3, §30-18-4, §30-18-5,
11 §30-18-6, §30-18-7, §30-18-8, §30-18-9, §30-18-10, §30-18-11
12 and §30-18-13 of the Code of West Virginia, 1931, as amended;
13 and to amend said article by adding thereto three new
14 sections, designated §30-18-4a, §30-18-7a and §30-18-14, all
15 relating to the licensing of private investigators and
16 security guards; registration of private investigative and
17 security guard employees; exemption for federal and federally
18 trained officers; prohibited acts; penalties for late
19 registration; and fees and charges for services of the
20 Secretary of State.

21 *Be it enacted by the Legislature of West Virginia:*

22 That §30-18-1, §30-18-3, §30-18-4, §30-18-5, §30-18-6, §30-18-
23 7, §30-18-8, §30-18-9, §30-18-10, §30-18-11 and §30-18-13 of the
24 Code of West Virginia, 1931, as amended, be amended and reenacted;

1 and that said article be amended by adding thereto three new
 2 sections, designated §30-18-4a, §30-18-7a and §30-18-14, all to
 3 read as follows:

4 **ARTICLE 18. PRIVATE INVESTIGATIVE AND SECURITY SERVICES.**

5 **§30-18-1. Definitions.**

6 For the purposes of this article, except where the context
 7 clearly requires otherwise, the following terms shall have the
 8 meanings ascribed to them:

9 ~~(1)~~ (a) "Applicant" means a person who files a completed
 10 application as required by sections three and six of this article
 11 to be licensed to conduct a private investigation business or a
 12 security guard business. When a person other than a natural person
 13 is applying for a license, the applicant shall be the person whose
 14 qualifications are presented to meet the experience or education
 15 requirements of ~~sections~~ section two or five of this article.

16 ~~(2)~~ (b) "Private investigation business" means the business of
 17 doing an investigation or investigations, for hire, reward or any
 18 other type of remuneration, to obtain information about:

19 ~~(A)~~ (1) A crime which is alleged to have occurred or is
 20 threatened to occur;

21 ~~(B)~~ (2) The habits, activities, conduct, movements, location,
 22 associations, transactions, reputation or character of any person;

23 ~~(C)~~ (3) The credibility of witnesses or other persons;

24 ~~(D)~~ (4) The location or recovery of lost or stolen property;

1 ~~(E)~~ (5) The causes or origins of any fire, accident or injury
2 to any property, real or personal, or to identify or locate any
3 person or persons responsible for any such fire, accident or
4 injury;

5 ~~(F)~~ (6) The truth or falsity of any statement or
6 representation, whether written or oral, or of any type of
7 depiction;

8 ~~(G)~~ (7) Any matters which constitute evidence or which may
9 lead to the discovery of evidence to be used before any judicial or
10 quasijudicial tribunal, including, but not limited to, civil or
11 criminal courts, administrative agencies, investigating committees,
12 or boards of award or arbitration;

13 ~~(H)~~ (8) The whereabouts of any missing or kidnapped person;

14 ~~(I)~~ (9) The affiliation, connection or relationship of any
15 person with any corporation or other business entity, union,
16 organization, society or association, or with any official, member
17 or representative thereof;

18 ~~(J)~~ (10) Any person or persons seeking employment in the place
19 of any employee or employees who have quit work by reason of any
20 strike; or

21 ~~(K)~~ (11) The conduct, honesty, efficiency, loyalty or
22 activities of employees, agents, contractors and subcontractors.

23 ~~(3)~~ (c) "Firm license" means the license held by a person whom
24 the Secretary of State has authorized to operate a private

1 detective investigative firm or security guard firm after such
2 person has filed and completed an application pursuant to the
3 application requirements contained in ~~sections~~ section three or six
4 and has satisfied the eligibility requirements contained in
5 sections two or five.

6 ~~(4)~~ (d) "Person" means a natural person, a group of persons or
7 individuals acting individually or as a group, a corporation,
8 company, partnership, association, society, firm, or any business
9 organization or entity organized or existing under the laws of this
10 or any other state or country;

11 ~~(5)~~ ~~(A)~~ (e) (1) "Private detective" or "private investigator"
12 means a person who is licensed pursuant to ~~the provisions of this~~
13 article to conduct a private investigation business, as defined in
14 ~~subdivision (2)~~ subsection (b) of this section, and who conducts
15 such business individually and independently from any private
16 detective or investigative firm;

17 ~~(B)~~ (2) "Private detective" or "private investigator" does not
18 include:

19 ~~(i)~~ (A) Any individual while acting as an adjuster for an
20 insurance company or companies;

21 ~~(ii)~~ (B) Individuals employed exclusively and regularly by
22 only one employer in connection with the affairs of such employer
23 only;

24 ~~(iii)~~ (C) An officer or employee of the United States, or any

1 law-enforcement officer of this state or any political subdivision
2 thereof, while such officer or employee is engaged in the
3 performance of his or her official duties or while working for a
4 private employer in his or her off-duty hours;

5 ~~(iv)~~ (D) Attorneys or counselors-at-law or any employee or
6 representative of such attorney or counselor;

7 ~~(v)~~ (E) Any corporation duly authorized by this state to
8 operate central burglar or fire alarm protection business; or

9 ~~(vi)~~ (F) Any investigator of crime appointed by a prosecuting
10 attorney of a county pursuant to ~~the provisions of~~ section two,
11 article four, chapter seven of this code.

12 ~~(6)~~ (G) "Private detective or investigative firm" means any
13 private detective agency or business or any investigative agency or
14 business that is operated by a licensed private detective or
15 investigator and which employs one or more other persons who
16 actually conduct the private investigation business as defined in
17 ~~subdivision (2)~~ subsection (b) of this section.

18 ~~(7)~~ ~~(A)~~ (f) "Security guard" means a person who is licensed
19 pursuant to ~~the provisions of~~ this article to conduct a security
20 guard business, as defined in ~~subdivision (8)~~ subsection (h) of
21 this section, and who conducts such business individually and
22 independently from a security guard firm.

23 ~~(B)~~ (g) "Security guard" does not include a person who is
24 employed exclusively and regularly by only one employer in

1 connection with the affairs of such employer only, or a person who
2 is otherwise hereinafter excluded from the requirements of this
3 article;

4 ~~(8)~~ ~~(A)~~ (h) (1) "Security guard business" means the business
5 of furnishing, for hire, reward or other remuneration, watchmen,
6 guards, bodyguards, private patrolmen or other persons, to:

7 ~~(i)~~ (A) Protect property, real or personal, or any person;

8 ~~(ii)~~ (B) To prevent theft, unlawful taking, misappropriation
9 or concealment of goods, wares or merchandise, money, bonds,
10 stocks, notes or other valuable documents, papers and articles of
11 value; or

12 ~~(iii)~~ (C) To furnish for hire, guard dogs or armored motor
13 vehicle security services, in connection with the protection of
14 persons or property;

15 ~~(B)~~ (2) "Security guard business" does not include any
16 activities or duties for which it is necessary to be trained and
17 certified as a law-enforcement officer in accordance with ~~the~~
18 ~~provisions of~~ article twenty-nine, chapter thirty of this code.

19 ~~(9)~~ (i) "Security guard firm" means any security guard agency
20 or business that is operated by a licensed security guard and which
21 employs one or more other persons who actually conduct a security
22 guard business as defined in ~~subdivision (8)~~ subsection (i) of this
23 section.

24 **§30-18-3. Application requirements for a license to conduct the**

1 **private investigation business.**

2 (a) To be licensed to be a private detective or a private
3 investigator or to operate a private detective or investigative
4 firm, each applicant shall complete and file a written application,
5 under oath, with the Secretary of State ~~and in such~~ on a form as
6 the secretary may prescribe.

7 (b) On the application, each applicant shall provide the
8 following information: The applicant's name, birth date,
9 citizenship, physical description, military service, current
10 residence, residences for the preceding seven years, qualifying
11 education or experience, the location of each of his or her offices
12 in this state and any other information requested by the Secretary
13 of State in order to comply with the requirements of this article.

14 (c) In the case of a corporation or other business entity that
15 is seeking a firm license, the application ~~shall~~ is to be signed by
16 the president or comparable authorized officer, and verified by the
17 secretary or treasurer of the ~~such~~ corporation or comparable
18 authorized officer and ~~shall~~ is to specify the name of the
19 corporation or other business entity, the date and place of its
20 ~~incorporation~~ formation, the names and titles of all officers, the
21 location of its principal place of business, and the name of the
22 city, town or village, stating the street and number, ~~and otherwise~~
23 ~~such~~ or an apt description as will reasonably indicate the
24 location. If the ~~corporation has been incorporated~~ business entity

1 was formed in a state other than West Virginia, a certificate of
2 good standing from the state of ~~incorporation~~ formation must
3 accompany the application. This information must be provided in
4 addition to that required to be provided by the applicant.

5 (d) (1) To qualify for an individual license, the ~~The~~
6 applicant shall provide:

7 ~~(1)~~ (A) Information in the application about whether the
8 applicant has ever been arrested for or convicted of any crime ~~or~~
9 ~~wrongs, either done or threatened,~~ against the government of the
10 United States;

11 ~~(2)~~ (B) Information about offenses by the applicant against
12 the laws of West Virginia or any state; and

13 ~~(3)~~ (C) Any facts as may be required by the Secretary of State
14 to show the good character, competency and integrity of the
15 applicant.

16 (2) To qualify for a firm license, the applicant shall provide
17 ~~such~~ information for each person who will be authorized to conduct
18 the private investigation business and for each officer, member or
19 partner of the firm.

20 (e) As part of the application, each applicant shall give the
21 Secretary of State permission to ~~review the records held by the~~
22 ~~division of public safety~~ conduct a criminal records check through
23 the Criminal Identification Bureau of the West Virginia State
24 Police and a national criminal history check through the Federal

1 Bureau of Investigation for any convictions that may be on record
2 for the applicant. A federal security officer, or a person who has
3 undergone a federal security training program and who has passed a
4 federal (FBI) criminal background check is otherwise exempt from
5 the requirements of this subsection.

6 (f) For each applicant for a license and for each officer,
7 member and partner of the firm applying for a license, the
8 application shall be accompanied by ~~one recent full-face~~
9 ~~photographs and one complete set of the person's fingerprints~~ one
10 set of classifiable fingerprints on an applicant fingerprint card
11 and two recent head and shoulders color photographs of the
12 applicant of acceptable quality for identification, at least one
13 inch by one inch in size. A federal officer, or a person who has
14 completed a federal security training program, and who has passed
15 a federal (FBI) criminal background check is otherwise exempt from
16 the requirements of this subsection.

17 (g) For each applicant, the application ~~shall~~ is to be
18 accompanied by:

19 (1) Character references from at least five reputable
20 citizens. Each reference must have known the applicant for at
21 least five years preceding the application. No reference may be
22 connected to the applicant by blood or marriage. All references
23 must have been written for the purpose of the application for a
24 license to conduct the private investigation business. A federal

1 officer, or a person who has completed a federal security training
2 program, and who has passed a federal (FBI) criminal background
3 check is otherwise exempt from the requirements of this
4 subdivision;

5 ~~(2) A nonrefundable application processing service charge of~~
6 ~~fifty dollars, which shall be payable to the Secretary of State to~~
7 ~~offset the cost of license review and criminal investigation~~
8 ~~background report from the department of public safety, along with~~
9 ~~a license fee of one hundred dollars if the applicant is an~~
10 ~~individual, or two hundred dollars if the applicant is a firm, or~~
11 ~~five hundred dollars if the applicant is a nonresident of West~~
12 ~~Virginia or a foreign corporation or business entity. The license~~
13 ~~fee shall be deposited to the General Revenue Fund, and shall be~~
14 ~~refunded only if the license is denied.~~

15 (2) A written statement of standards of professional conduct,
16 to be furnished by the Secretary of State with the application
17 form, signed by the applicant;

18 (3) The applicable license fee and the nonrefundable
19 processing service charge provided in section thirteen of this
20 article; and

21 ~~(3)~~ (4) For an annual application for renewal of one or more
22 licenses filed after the license expiration date, the late
23 application fee provided in section thirteen of this article.

24 (h) All applicants for private detective or private

1 investigator licenses or for private investigation firm licenses
2 shall file in the office of Secretary of State a surety bond. ~~Such~~
3 The bond shall must:

4 (1) Be in the sum of \$2,500 and conditioned upon the faithful
5 and honest conduct of ~~such~~ the business by ~~such~~ the applicant;

6 (2) Be written by a company recognized and approved by the
7 Insurance Commissioner of West Virginia and approved by the
8 Attorney General of West Virginia with respect to its form; and

9 (3) Be in favor of the State of West Virginia for any person
10 who is damaged by any violation of this article. The bond must
11 also be in favor of any person damaged by ~~such~~ a violation of this
12 article.

13 (i) Any person claiming against the bond required by
14 subsection (h) of this section for a violation of this article may
15 maintain an action at law against any licensed individual or firm
16 and against the surety. The surety ~~shall be~~ is liable only for
17 damages awarded under section twelve of this article and not the
18 punitive damages permitted under that section. The aggregate
19 liability of the surety to all persons damaged by a person or firm
20 licensed under this article may not exceed the amount of the bond.

21 (j) The Secretary of State shall issue an identification card
22 bearing the licensee's photograph, name and license number assigned
23 in accordance with section seven-a of this article and the date the
24 license expires. The licensee shall carry a valid license card at

1 all times he or she is engaged in activities within the scope of
2 his or her employment. Upon loss of the license card, the licensee
3 shall immediately order a replacement card and pay the fee for a
4 replacement card specified in section thirteen of this article.

5 **§30-18-4. Requirements for employees conducting the private**
6 **investigative business under a firm license.**

7 (a) For the purposes of this article, a "representative" of a
8 private detective or private investigative firm is any person who
9 conducts the investigative business of the firm or who acts as an
10 investigator under the auspices of the firm, regardless of whether
11 that person receives compensation for his or her acts.

12 (b) Any person who ~~has~~ holds a private detective firm or
13 investigative firm license shall;

14 (1) ~~be responsible for supervising any employee or other~~
15 ~~individual who conducts the private investigation business under~~
16 ~~the authority of such person's firm license, regardless of whether~~
17 ~~such employee or other individual receives compensation for~~
18 ~~conducting such business. Such supervision shall include providing~~
19 Supervise any representative, as defined in subsection (a) of this
20 section;

21 (2) Provide any education or training that is reasonably
22 necessary to ensure compliance with the requirements of this
23 article or which is required for registration of the representative
24 as required by this section; and

1 (3) Submit on a form prescribed by the Secretary of State an
2 application for registration of each representative of the
3 licensee. A firm licensed on July 1, 2011, must file its initial
4 application(s) for representative registration with the firm's next
5 license renewal application. However, no firm license expires
6 solely by reason of the licensee's failure to file a timely
7 representative registration application if the licensee files the
8 registration application within ninety days after its license is
9 renewed. The application for registration of any representative
10 who begins work after July 1, 2011, is to be submitted within ten
11 working days of the representative's first day of work.

12 (c) Each application for registration under this section must:

13 (1) State the representative's name, residence address, birth
14 date, social security number, first date of service as a
15 representative of the applying firm, and the name and address of
16 the employer legally responsible for employment of the person;

17 (2) Indicate whether the representative holds a valid current
18 registration under this section as an employee of another firm and
19 whether the application for registration is a transfer or
20 concurrent registration;

21 (3) Affirm that the representative has previously received a
22 minimum of four hours of training through a program approved by the
23 Secretary of State, or affirm that the representative is a federal
24 officer or has previously completed a federal security training

1 program. The Secretary of State may provide the necessary state
2 training, in which case all fees associated with the training shall
3 be paid to the Secretary of State;

4 (4) Be signed and dated by the license holder of the applying
5 firm;

6 (5) Be accompanied by one set of classifiable fingerprints on
7 an applicant fingerprint card and two recent head and shoulders
8 color photographs of the representative of acceptable quality for
9 identification, at least one inch by one inch in size;

10 (6) Be accompanied by a statement, signed by the
11 representative, indicating whether he or she has ever been arrested
12 for or convicted of any crime against the laws of the United
13 States, of the State of West Virginia or of any other state;

14 (7) Be accompanied by a statement, signed by the license
15 holder, that the representative has presented proof of identity by
16 displaying for the license holder a valid photographic
17 identification issued by a recognized state or federal government
18 agency, such as a driver's license or passport;

19 (8) Be accompanied by a written statement of standards of
20 professional conduct, to be furnished by the Secretary of State
21 with the application form, signed by the representative; and

22 (9) Be accompanied by the fee required by section thirteen of
23 this article.

24 (d) The applicant shall retain a copy of the application and

1 shall give a copy to each representative. The representative's
2 copy serve as a temporary registration card for up to sixty days.
3 The temporary registration is valid only if the application for
4 registration was received by the Secretary of State within ten
5 working days after the date on which the representative began work.

6 ~~(b)~~ (e) Any ~~employee or individual~~ representative who conducts
7 the private investigation business under the authority of a private
8 detective or investigative firm license shall:

9 (1) Satisfy the requirements of section two of this article,
10 except that ~~such person~~ the representative need not satisfy the
11 education and training requirements contained in subdivision (7),
12 subsection (a), section two of this article; and

13 (2) Authorize the Secretary of State to ~~review the records~~
14 ~~held by the division of public safety~~ conduct a criminal records
15 check through the criminal identification bureau of the West
16 Virginia State Police and a national criminal history check through
17 the Federal Bureau of Investigation for any convictions that may be
18 on record for ~~such employee or individual~~ the representative. A
19 representative who is a federal officer, or a representative who
20 has completed a federal security training program, and who has
21 passed a federal (FBI) criminal background check is otherwise
22 exempt from the requirements of this subdivision.

23 ~~(c)~~ (f) A holder of a private detective or investigative firm
24 license is prohibited from authorizing any ~~individual or employee~~

1 representative to conduct ~~a private~~ any investigative business of
2 the firm if ~~such individual~~ the representative does not comply with
3 ~~the requirements of this section.~~

4 ~~(d) For every employee or individual who conducts the business~~
5 ~~of private investigation under the authority of a security guard~~
6 ~~firm license, the holder of such license must maintain a recent~~
7 ~~full face photograph and one complete set of fingerprints on file~~
8 ~~at such firm's central business location in this state. Upon~~
9 ~~request, the holder of the firm license must release the~~
10 ~~photographs and fingerprints to the Secretary of State.~~

11 (g) The Secretary of State shall issue an identification card
12 bearing the representative's photograph, name and registration
13 number assigned in accordance with section seven-a of this article
14 and the date on which the registration expires. The representative
15 shall carry a valid registration card at all times he or she is
16 engaged in activities within the scope of his or her employment.
17 Upon loss of the registration card, the registrant shall
18 immediately order a replacement card and pay the fee for a
19 replacement card specified in section thirteen.

20 (h) A representative who transfers employment or whose
21 services are supplied to another licensed private investigative
22 agency at any time during the duration of the two-year registration
23 period shall submit a transfer of registration or a concurrent
24 registration which is to be in effect for the remainder of the

1 registration period. The request for transfer or concurrent
2 registration must be made on a form prescribed by the Secretary of
3 State and is to be accompanied by the fee prescribed in section
4 thirteen of this article. In the event of concurrent registration,
5 the representative shall carry the registration card of the
6 licensee for which the representative is acting at that time.

7 **§30-18-4a. Temporary permit for private investigator licensed in**
8 **another state.**

9 A nonresident person who holds a valid private investigator
10 license in another state and who is currently in good standing with
11 that state may apply for a temporary permit to conduct private
12 investigation activities within this state if the investigative
13 activities originated in the state of licensure. The application
14 is to be made on forms prescribed by the Secretary of State and
15 accompanied by proof that the standards of licensure in the other
16 state are at least substantially equivalent to the licensure
17 requirements in this state, certification that the applicant holds
18 a valid current license in the other state, and the fee established
19 in section thirteen of this article. The Secretary of State may,
20 at his or her discretion, issue the nonrenewable temporary license
21 for a period not to exceed thirty days. It is the duty of the
22 applicant to comply with any business registration requirements of
23 this state.

24 **§30-18-5. Eligibility requirements to be licensed to conduct**

1 **security guard business.**

2 (a) In order to be eligible for any license to conduct
3 security guard business, an applicant shall:

4 (1) Be at least eighteen years of age;

5 (2) Be a citizen of the United states or an alien who is
6 legally residing within the United States;

7 (3) Not have had any previous license to conduct security
8 guard business or to conduct the private investigation business
9 revoked or any application for any such licenses or registrations
10 denied by the appropriate governmental authority in this or any
11 other state or territory;

12 (4) Not have been declared incompetent by reason of mental
13 defect or disease by any court of competent jurisdiction unless
14 said court has subsequently determined that the applicant's
15 competency has been restored;

16 (5) Not suffer from habitual drunkenness or from narcotics
17 addiction or dependence;

18 (6) Be of good moral character;

19 (7) Have had at least one year verified, full time employment
20 conducting security guard business or conducting the private
21 investigation business working for a licensed firm or have one year
22 of substantially equivalent training or experience;

23 (8) Not have been convicted of a felony in this state or any
24 other state or territory;

1 (9) Not have been convicted of any of the following:

2 (A) Illegally using, carrying or possessing a pistol or other
3 dangerous weapon;

4 (B) Making or possessing burglar's instruments;

5 (C) Buying or receiving stolen property;

6 (D) Entering a building unlawfully;

7 (E) Aiding an inmate's escape from prison;

8 (F) Possessing or distributing illicit drugs;

9 (G) Any misdemeanor involving moral turpitude or for which
10 dishonesty of character is a necessary element; and

11 (10) Not having violated any provision of section eight of
12 this article.

13 (b) ~~The provisions of~~ This section ~~shall~~ does not prevent the
14 issuance of a license to any person who, subsequent to his
15 conviction, ~~shall have~~ has received an executive pardon therefor,
16 removing this disability.

17 **§30-18-6. Application requirements for a license to conduct**
18 **security guard business.**

19 (a) To be licensed as a security guard or to operate a
20 security guard firm, each applicant shall complete and file a
21 written application, under oath, with the Secretary of State ~~and in~~
22 ~~such~~ on a form as the secretary may prescribe.

23 (b) On the application, each applicant shall provide the
24 following information: The applicant's name, birth date,

1 citizenship, physical description, military service, current
2 residence, residences for the preceding seven years, qualifying
3 education or experience, the location of each of his or her offices
4 in this state and any other information requested by the Secretary
5 of State in order to comply with the requirements of this article.

6 (c) In the case of a corporation or other business entity that
7 is seeking a firm license, the application ~~shall~~ must be signed by
8 the president or comparable authorized officer, and verified by the
9 secretary or treasurer of ~~such~~ the corporation or comparable
10 authorized officer and shall specify the name of the corporation or
11 other business entity, the date and place of its ~~incorporation~~
12 formation, the names and titles of all officers, the location of
13 its principal place of business, and the name of the city, town or
14 village, stating the street and number, ~~and otherwise such~~ or an
15 apt description as will reasonably indicate the location. If the
16 ~~corporation has been incorporated~~ business entity was formed in a
17 state other than West Virginia, a certificate of good standing from
18 the state of ~~incorporation~~ formation must accompany the
19 application. This information must be provided in addition to that
20 required to be provided by the applicant.

21 (d) (1) To qualify for an individual license, The the
22 applicant shall provide:

23 ~~(1)~~ (A) Information in the application about whether the
24 applicant has ever been arrested for or convicted of any crime ~~or~~

1 ~~wrongs, either done or threatened,~~ against the government of the
2 United States;

3 ~~(2)~~ (B) Information about offenses by the applicant against
4 the laws of West Virginia or any state; and

5 ~~(3)~~ (C) Any facts as may be required by the Secretary of State
6 to show the good character, competency and integrity of the
7 applicant.

8 (2) To qualify for a firm license, the applicant shall provide
9 ~~such~~ information for each person who would be authorized to conduct
10 security guard business under the applicant's firm license and for
11 each officer, member or partner in the firm.

12 (e) As part of the application, each applicant shall give the
13 Secretary of State permission to ~~review the records held by the~~
14 ~~department of public safety~~ conduct a criminal records check
15 through the criminal identification bureau of the West Virginia
16 State Police and a national criminal history check through the
17 Federal Bureau of Investigation for any convictions that may be on
18 record for the applicant. A federal officer, or a person who has
19 completed a federal security training program, and who has passed
20 a federal (FBI) criminal background check is otherwise exempt from
21 the requirements of this subsection; and

22 (f) For each applicant for a license and for each officer,
23 member and partner of the firm applying for a license, the
24 application shall be accompanied by ~~one recent full face photograph~~

1 ~~and one complete set of the person's fingerprints~~ one set of
2 classifiable fingerprints on an applicant fingerprint card and two
3 recent head and shoulders color photographs of the applicant of
4 acceptable quality for identification, at least one inch by one
5 inch in size.

6 (g) For each applicant, the application shall be accompanied
7 by:

8 (1) Character references from at least five reputable
9 citizens. Each reference must have known the applicant for at
10 least five years preceding the application. No reference may be
11 connected to the applicant by blood or marriage. All references
12 must have been written for the purpose of the application for a
13 license to conduct security guard business. A federal officer, or
14 a person who has completed a federal security training program, and
15 who has passed a federal (FBI) criminal background check is
16 otherwise exempt from the requirements of this subdivision; and

17 (2) A written statement of standards of professional conduct,
18 to be furnished by the Secretary of State with the application
19 form, signed by the applicant;

20 ~~(2) A nonrefundable application processing service charge of~~
21 ~~fifty dollars, which shall be payable to the Secretary of State to~~
22 ~~offset the cost of license review and criminal investigation~~
23 ~~background report from the department of public safety, along with~~
24 ~~a license fee of one hundred dollars if the applicant is an~~

1 ~~individual, or two hundred dollars if the applicant is a firm, or~~
2 ~~five hundred dollars if the applicant is a nonresident of West~~
3 ~~Virginia or a foreign corporation or business entity. The license~~
4 ~~fee shall be deposited to the General Revenue Fund, and shall be~~
5 ~~refunded only if the license is denied.~~

6 (3) The applicable license fee and nonrefundable processing
7 service charge provided by section thirteen of this article; and

8 (4) For an annual application for renewal of one or more
9 licenses filed after the license expiration date, an additional
10 late application fee as provided in section thirteen of this
11 article.

12 (h) All applicants for security guard licenses or security
13 guard firm licenses shall file in the office of Secretary of State
14 a surety bond. ~~Such~~ The bond shall must:

15 (1) Be in the sum of ~~two thousand five hundred dollars~~ \$20,000
16 and conditioned upon the faithful and honest conduct of ~~such~~ the
17 business by ~~such~~ the applicant;

18 (2) Be written by a company recognized and approved by the
19 Insurance Commissioner of West Virginia and approved by the
20 Attorney General of West Virginia with respect to its form;

21 (3) Be in favor of the State of West Virginia for any person
22 who is damaged by any violation of this article. The bond must
23 also be in favor of any person damaged by ~~such~~ a violation of this
24 article.

1 (i) Any person claiming against the bond required by
2 subsection (h) of this section for a violation of this article may
3 maintain an action at law against any licensed individual or firm
4 and against the surety. The surety ~~shall be~~ is liable only for
5 damages awarded under section twelve of this article and not the
6 punitive damages permitted under that section. The aggregate
7 liability of the surety to all persons damaged by a person or firm
8 licensed under this article may not exceed the amount of the bond.

9 (j) The Secretary of State shall issue an identification card
10 bearing the licensee's photograph, name and license number assigned
11 in accordance with section seven-a of this article and the date on
12 which the license expires. The licensee shall carry a valid
13 license card at all times during the scope of employment, and
14 present that card upon the request of any person. Upon loss of the
15 license card, the licensee shall immediately order a replacement
16 card and pay the fee for a replacement card specified in section
17 thirteen of this article.

18 **§30-18-7. Requirements for employees conducting security guard**
19 **business under a firm license.**

20 (a) For the purposes of this article, a "representative" of a
21 security guard firm is any person who conducts the security
22 business of the firm or who acts as a security guard under the
23 auspices or in the uniform of the firm, regardless of whether that
24 person receives compensation for his or her acts.

1 ~~(a)~~ (b) Any person who ~~has~~ holds a security guard firm
2 license shall:

3 ~~(1) be responsible for supervising~~ Supervise any ~~employee or~~
4 ~~other individual who conducts security guard business under the~~
5 ~~authority of such person's firm license, regardless of whether such~~
6 ~~employee or other individual receives compensation for conducting~~
7 ~~such business. Such supervision shall include providing~~
8 representative, as defined in subsection (a) of this section;

9 (2) Provide any education or training that is reasonably
10 necessary to ensure compliance with the requirements of this
11 article or which is required for registration of the representative
12 as required by this section; and

13 (3) Submit on a form prescribed by the Secretary of State, an
14 application for registration of each representative of the
15 licensee. Any firm licensed on July 1, 2011, shall file its
16 representative registration application(s) with the firm's license
17 renewal application prior to the next expiration of the firm
18 license. However, no firm license expires solely by reason of the
19 licensee's failure to file a timely representative registration
20 application if the licensee files the registration application
21 within ninety days after its license is renewed. The application
22 for registration of any new representative who begins work after
23 July 1, 2011, must be submitted within ten working days after the
24 representative's first day of work.

1 (c) Each application for registration under this section must:

2 (1) State the representative's name, residence address, birth
3 date, social security number, first date of service as a
4 representative of the applying firm and the name and address of the
5 employer legally responsible for employment of the person;

6 (2) Indicate whether the representative holds a valid current
7 registration under this section as an employee of another firm and
8 whether the application for registration is a transfer or
9 concurrent registration;

10 (3) Affirm that the representative has previously received a
11 minimum of four hours of training through a program approved by the
12 Secretary of State, or affirm that the representative is a federal
13 officer or has completed a federal security training program. The
14 Secretary of State may provide and charge a fee for such state
15 training;

16 (4) Be signed and dated by the license holder of the applying
17 firm;

18 (5) Be accompanied by one set of classifiable fingerprints on
19 an applicant fingerprint card, two recent head and shoulders color
20 photographs of the representative of acceptable quality for
21 identification, at least one inch by one inch in size;

22 (6) Be accompanied by a statement, signed by the
23 representative, indicating whether he or she has ever been arrested
24 for or convicted of any crime against the laws of the United

1 States, of the State of West Virginia or of any other state;

2 (7) Be accompanied by a statement, signed by the license
3 holder, that the representative has presented proof of identity by
4 displaying for the license holder a valid photographic
5 identification issued by a recognized government agency, such as a
6 driver's license or passport;

7 (8) Be accompanied by a written statement of standards of
8 professional conduct, provided by the Secretary of State with the
9 application form, signed by the representative; and

10 (9) Be accompanied by the appropriate fee required in section
11 thirteen of this article.

12 (d) The applying firm shall retain a copy of the application
13 and shall give each representative a copy. The representative's
14 copy will serve as a temporary registration card for sixty days.
15 The temporary registration is valid only if the application for
16 registration was received by the Secretary of State within ten
17 working days after the representative began work.

18 ~~(b)~~ (e) Any ~~employee or individual~~ representative who conducts
19 security guard business under the authority of a firm license shall
20 ~~(1)~~ satisfy the requirements of section five of this article,
21 except that ~~such~~ the person need not satisfy the prior employment
22 requirements contained in subdivision (7), subsection (a) of
23 section five. and

24 ~~(2)~~ (f) Authorize A representative who conducts security guard

1 business under authority of a firm license and whose job duties
2 require him or her to carry a weapon or to provide security
3 services for public or government buildings, airports or schools
4 shall authorize the Secretary of State to ~~review the records held~~
5 ~~by the division of public safety~~ conduct a criminal records check
6 through the criminal identification bureau of the West Virginia
7 State Police and a national criminal history check through the
8 Federal Bureau of Investigation for any convictions that may be on
9 record for ~~such employee or individual~~ the representative. A
10 representative who is a federal officer or has completed a federal
11 security training program and passed a federal (FBI) criminal
12 background check is otherwise exempt from this subsection.

13 ~~(c)~~ (g) A holder of a security guard firm license is
14 prohibited from authorizing any individual or employee to conduct
15 any investigative or security guard business of the firm if ~~such~~
16 the individual does not comply with the requirements of this
17 section.

18 ~~(d)~~ ~~For every employee or individual who conducts security~~
19 ~~guard business under the authority of a security guard firm~~
20 ~~license, the holder of such license must maintain a recent full-~~
21 ~~face photograph and one complete set of fingerprints on file at~~
22 ~~such firm's central business location in this state. Upon request,~~
23 ~~the holder of the firm license must release the photographs and~~
24 ~~fingerprints to the Secretary of State.~~

1 (h) Any representative who conducts security guard business
2 under authority of a firm license and who is required to undergo
3 the criminal records check pursuant to subsection (f), or who is
4 exempt from such requirement as a federal officer or a person who
5 has completed a federal security training program and passed a
6 federal(FBI)criminal background check shall be registered as a
7 Class I representative. Any other representative who conducts
8 security guard business under the authority of a firm license shall
9 be registered as a Class II representative.

10 (i) The Secretary of State shall issue an identification card
11 bearing the representative's photograph, name, class number,
12 registration number assigned in accordance with section seven-a of
13 this article and the date on which the registration expires. The
14 representative shall carry a valid registration card at all times
15 during the scope of employment, and present that card upon the
16 request of any person. Upon loss of the registration card, the
17 representative shall immediately order and pay the fee for a
18 replacement card specified in section thirteen.

19 (j) A representative who transfers employment or whose
20 services are supplied to another licensed security guard agency at
21 any time during the two-year registration period shall submit a
22 transfer of registration or a concurrent registration which is to
23 be in effect for the remainder of the registration period. The
24 request for transfer or concurrent registration must be made on a

1 form prescribed by the Secretary of State and is to be accompanied
2 by the appropriate fee prescribed in section thirteen of this
3 article. In the event of a concurrent registration, the
4 representative shall carry the registration card of the licensee
5 for which the representative is acting at that time.

6 **§30-18-7a. Assignment of license number and registration number.**

7 The Secretary of State shall assign a unique number to each
8 licensee and representative upon approval of an application for
9 license or registration. It is the duty of each licensee or
10 representative to refer to his or her license or registration
11 number in all written documents used in the course of the private
12 investigation or security guard business. An individual or entity
13 who holds a valid license on July 1, 2011, shall be issued a
14 license number the next time the license is renewed.

15 **§30-18-8. Prohibitions.**

16 (a) ~~No~~ A person shall may not engage in the private
17 investigation business or security guard business without having
18 first obtained from the Secretary of State a license to conduct
19 ~~such~~ that business.

20 (b) An unlicensed person may not conduct any private
21 investigation business or security guard business on behalf of a
22 person, firm or agency holding a firm license without having first
23 been registered with the office of the Secretary of State in
24 accordance with sections four and seven of this article.

1 ~~(b)~~ (c) ~~All licensed persons~~ Any licensee or registered
 2 representative, including a private ~~detectives~~ detective, private
 3 ~~investigators~~ investigator, security ~~guards~~ guard, private
 4 detective or investigative ~~firms~~ firm and security guard ~~firms~~
 5 firm, ~~are~~ is prohibited from transferring ~~their licenses~~ his, her
 6 or its license or representative registration to an unlicensed or
 7 unregistered person, firm or agency. This prohibition includes
 8 contracting or subcontracting with an unlicensed or unregistered
 9 person, firm or agency to conduct the private investigation
 10 business or security guard business.

11 ~~(c)~~ (d) It is unlawful for any person subject to ~~the~~
 12 ~~provisions of~~ this article to knowingly commit any of the
 13 following:

14 (1) Employ any individual to perform the duties of an employee
 15 who has not first complied with ~~all provisions of~~ this article and
 16 the adopted ~~regulations~~ rules;

17 (2) Falsely represent that a person is the holder of a valid
 18 license or representative registration;

19 (3) Make a false report with respect to any matter with which
 20 he or she is employed;

21 (4) Divulge any information acquired from or for a client to
 22 persons other than the client or his or her authorized agent
 23 without express authorization to do so or unless required by law;

24 (5) Accept employment which includes obtaining information

1 intended for illegal purposes;

2 (6) Authorize or permit another person to violate ~~any~~
3 ~~provision of~~ this article or any rule of the Secretary of State
4 adopted for this article.

5 **§30-18-9. Renewal of license.**

6 (a) A license granted under ~~the provisions of~~ this article
7 shall be in effect for one year from the date the certificate of
8 license is issued and may be renewed for a period of one year by
9 the Secretary of State upon application, in ~~such a~~ form as the
10 secretary may prescribe, ~~and~~ upon payment of the appropriate fee
11 required by section thirteen of this article and upon the filing of
12 the surety bond required by sections three and six of this article.

13 (b) A registration granted under this article shall be in
14 effect for two years from the date the certificate of registration
15 is issued and may be renewed for a period of two years by the
16 Secretary of State upon application, in a form as the secretary may
17 prescribe, and upon payment of the appropriate fee required by
18 section thirteen of this article.

19 (c) ~~At the time of applying~~ Upon receipt of an application for
20 renewal of a license or registration, the Secretary of State may
21 require any person to provide additional information to reflect any
22 changes in the original application or any previous renewal.

23 **§30-18-10. Authority of Secretary of State.**

24 (a) When the Secretary of State ~~shall be~~ is satisfied as to

1 the good character, competency and integrity of an applicant, of
2 all ~~employees or individuals~~ representatives conducting the private
3 investigation business or security guard services under a firm
4 license and, if the applicant is a firm or other business entity,
5 of each member, officer or partner, he or she shall issue and
6 deliver to ~~such~~ the applicant a certificate of license. Each
7 license issued shall be for a period of one year and shall be
8 revocable at all times for cause shown pursuant to subsection (b)
9 of this section or any rules promulgated pursuant thereto.

10 (b) The Secretary of State ~~shall have the authority to~~ may
11 propose for promulgation in accordance with ~~the provisions of~~
12 chapter twenty-nine-a of this code such legislative rules as may
13 be necessary for the administration and enforcement of this article
14 and for the issuance, suspension and revocation of licenses issued
15 under ~~the provisions of~~ this article. The Secretary of State shall
16 afford any applicant an opportunity to be heard in person or by
17 counsel when a determination is made to deny, revoke or suspend any
18 such applicant's license or application for license, including a
19 renewal of a license. Such applicant shall have fifteen days from
20 the date of receiving written notice of the Secretary of State's
21 adverse determination to request a hearing on the matter of denial,
22 suspension or revocation. The action of the Secretary of State in
23 granting, renewing or in refusing to grant or to renew, a license,
24 shall be subject to review by the circuit court of Kanawha County

1 or other court of competent jurisdiction.

2 (c) At any hearing before the Secretary of State to challenge
3 an adverse determination by the Secretary of State on the matter of
4 a denial, suspension or revocation of a license, if the adverse
5 determination is based upon a conviction for a crime which would
6 bar licensure under ~~the provisions of~~ this article, the hearing
7 shall be an identity hearing only, and the sole issue which may be
8 contested is whether the person whose application is denied or
9 whose license is suspended or revoked is the same person convicted
10 of the crime.

11 **§30-18-11. Penalties.**

12 (a) Any person, licensed or unlicensed, who violates any of
13 the provisions of this article is guilty of a misdemeanor and, upon
14 conviction, shall be fined not less than \$100 nor more than \$5,000
15 or be confined in jail for not more than one year, or both.

16 (b) In the case of a violation of subsection (a) or (b) of
17 section eight of this article, a fine is assessed by the court for
18 each day that an individual conducted the private investigation
19 business or security guard business without a license or
20 registration. In the case of a firm license, the fine is based on
21 each day that the private investigative or security services were
22 provided multiplied by the number of unauthorized persons providing
23 those services.

24 (c) In addition to penalties provided in subsections (a) and

1 (b) of this section, the Secretary of State may charge any person
2 who violates subsection (a) or (b) of section eight of this article
3 a monetary penalty.

4 **§30-18-13. Licensing and registration fees and service charges.**

5 ~~All fees collected hereunder by the Secretary of State shall~~
6 ~~be paid to the treasurer of the state and deposited in the General~~
7 ~~Revenue Fund.~~

8 (a) Each West Virginia resident or West Virginia domestic
9 corporation, limited liability company or other business entity
10 which applies for a license under this article shall pay a
11 nonrefundable processing service charge of \$50 and a licensing fee
12 according to the following schedule:

13 (1) \$100 for a private investigator license for one
14 individual.

15 (2) \$200 for a private investigator license for one firm.

16 (3) \$100 for a security guard license for one individual.

17 (4) \$200 for a security guard license for one firm.

18 (5) For any combination of license types or individual and
19 firms licenses combined, the sum of each of the applicable license
20 fees.

21 (b) Each out-of-state resident or foreign corporation, limited
22 liability company or other business entity which applies for a
23 license under this article shall pay a nonrefundable processing
24 service charge of \$50 and a licensing fee according to the

1 following schedule:

2 (1) \$500 for a private investigator license for one individual
3 or one firm.

4 (2) \$500 for a security guard license for one individual or
5 one firm.

6 (3) For any combination of license types or individual and
7 firms combined, the sum of each of the applicable license fees.

8 (4) \$50 for a thirty day temporary private investigator permit
9 for one individual.

10 (c) Each applicant for renewal of a license received by the
11 Secretary of State after the expiration of the previous license
12 shall pay a late fee of \$50 for each whole or partial month the
13 application is late.

14 (d) Each initial application for registration as a
15 representative of a licensed private investigative or as a Class I
16 representative of a security guard firm shall be accompanied by a
17 nonrefundable processing service charge of \$60.

18 (e) Each initial application for registration as a Class II
19 representative of a security guard firm shall be accompanied by a
20 nonrefundable processing service charge of \$15.

21 (f) Each application for renewal of registration for a
22 representative of a licensed private investigative or a Class I
23 representative of a security guard firm shall be accompanied by a
24 nonrefundable processing service charge of \$30.

1 (g) Each application for renewal of registration for a
2 representative of a Class II representative of a security guard
3 firm shall be accompanied by a nonrefundable processing service
4 charge of \$15.

5 (h) Each application for transfer of the registration of a
6 representative from one firm to another or for concurrent
7 registration at any additional firm during the two-year
8 registration period shall be accompanied by a fee of \$15.

9 (i) Each applicant for renewal of a registration received by
10 the Secretary of State after the expiration of the previous
11 registration shall pay a late fee of \$10 for each whole or partial
12 month the application is late.

13 (j) Each applicant for a replacement license card or
14 registration card shall pay a service charge of \$10.

15 (k) Initial representative registration fees, representative
16 registration renewal fees, representative registration transfer
17 fees and representative registration concurrent fees collected by
18 the Secretary of State pursuant to this article shall be deposited
19 in the service fees and collections account established by section
20 two, article ten, chapter fifty-nine of this code for the operation
21 of the office of the Secretary of State. All other fees and moneys
22 collected by the Secretary of State pursuant to this article shall
23 be deposited as follows: Fifty percent shall be deposited in the
24 state fund, general revenue and fifty percent shall be deposited in

1 the service fees and collections account established by section
2 two, article ten, chapter fifty-nine of this code for the operation
3 of the office of the Secretary of State.

4 **§30-18-14. Inactive license.**

5 (a) The Secretary of State shall transfer any licensee in good
6 standing to inactive status for a period of one year upon receipt
7 of an application, on a form provided by the Secretary of State and
8 completed by the licensee and upon payment of an inactive status
9 fee of \$25. A licensee may renew the transfer to inactive status
10 every year by completing and filing with the Secretary of State
11 another application and paying a fee of \$25.

12 (b) The Secretary of State may waive the inactive status fee
13 upon receipt of proof that the licensee is on active duty with the
14 military. Within thirty days after leaving active duty with the
15 military, the licensee must notify the Secretary of State of the
16 change and pay the \$25 fee to remain on inactive status.

NOTE: The purpose of this bill is to strengthen enforcement in the private investigating and security guard field by revising the current law governing the licensing of private investigators and security guards. It modifies the licensing of private investigators and security guards, with exceptions for federal officers, provides for the registration of private investigative and security guard employees, and provides penalties for late registration and fees and charges for services of the Secretary of State.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would

be added.

§30-18-4a, §30-18-7a and §30-18-14 are new; therefore, they have been completely underscored.