

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Committee Substitute

for

Senate Bill 597

BY SENATORS GAUNCH, BOSO, AND CLINE

[Originating in the Committee on Government

Organization; Reported on February 22, 2018]

1 A BILL to amend and reenact §30-18-2, §30-18-3, §30-18-5, §30-18-6, and §30-18-10 of the Code
2 of West Virginia, 1931, as amended, all relating to eligibility and application requirements
3 for licenses to conduct private investigation or security guard businesses; prohibiting
4 individuals who have been convicted in this state of a misdemeanor offense of domestic
5 violence, assault against family or household member, or battery against family or
6 household member or who have been convicted in another jurisdiction of a misdemeanor
7 with similar essential elements from being eligible to obtain a license to conduct a private
8 investigation or security guard business; setting forth who is to be included as a family or
9 household member; prohibiting individuals from conducting fire or arson investigations
10 who do not satisfy specific criteria; adding three criteria for individuals who wish to conduct
11 fire or arson investigations; clarifying that bonds required for private investigation and
12 security guard businesses do not require raised seal certifications; and modifying the
13 Secretary of State's rule-making authority and duties to promulgate rules related to private
14 investigation or security guard businesses.

Be it enacted by the Legislature of West Virginia:

ARTICLE 18. PRIVATE INVESTIGATIVE AND SECURITY SERVICES.

§30-18-2. Eligibility requirements for license to conduct the private investigation business.

1 (a) In order to be eligible for any license to conduct the private investigation business, an
2 applicant shall:

3 (1) Be at least 18 years of age;

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

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

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

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

14 (6) Be of good moral character;

15 (7) Have a minimum of two years of experience, education, or training in any one of the
16 following areas, or some combination thereof:

17 (A) Course work that is relevant to the private investigation business at an accredited
18 college or university;

19 (B) Employment as a member of any United States government investigative agency,
20 employment as a member of a state or local law-enforcement agency or service as a sheriff;

21 (C) Employment by a licensed private investigative or detective agency for the purpose of
22 conducting the private investigation business;

23 (D) Service as a magistrate in this state; or

24 (E) Any other substantially equivalent training or experience;

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

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

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

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

29 (C) Buying or receiving stolen property;

30 (D) Entering a building unlawfully;

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

32 (F) Possessing or distributing illicit drugs;

33 (G) Any misdemeanor crime of domestic violence as defined in 18 U.S.C. § 921(a)(33); a
34 misdemeanor offense of assault or battery under §61-2-9(b), §61-2-9(c), or §61-2-28 of this code
35 in which the victim was a current or former spouse, current or former sexual or intimate partner,

36 person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's
37 child or ward, or a member of the defendant's household at the time of the offense; or a
38 misdemeanor offense with similar essential elements in a jurisdiction other than this state; and

39 ~~(G)~~ (H) Any misdemeanor involving moral turpitude or for which dishonesty of character
40 is a necessary element. ~~and~~

41 (10) Not have violated any provision of §30-18-8 of this code.

42 The provisions of this section shall not prevent the issuance of a license to any person
43 who, subsequent to his or her conviction, shall have received an executive pardon therefor,
44 removing this disability.

45 (b) Any person who qualifies for a private investigator's license shall also be qualified to
46 conduct security guard business upon notifying the Secretary of State in writing that the person
47 will be conducting such business.

48 (c) No person may be employed as a licensed private investigator while serving as
49 magistrate.

50 (d) No person shall conduct any private investigation in the fields of fire or arson
51 investigations in this state unless the person is:

52 (1) Licensed in accordance with this article;

53 (2) Is certified as a Certified Fire Investigator (CFI) and/or Certified Fire and Explosion
54 Investigator (CFEI) by the National Association of Fire Investigators, International Association of
55 Arson Investigators, Bureau of Alcohol, Tobacco & Firearms, or the West Virginia State Fire
56 Commission; and

57 (3) Upon revocation of his or her certification by either the National Association of Fire
58 Investigators, International Association of Arson Investigators, Bureau of Alcohol, Tobacco &
59 Firearms, or the West Virginia State Fire Commission, a private investigator who conducts fire or
60 arson investigations shall cease the practice of fire or arson investigations.

§30-18-3. Application requirements for a license to conduct the private investigation business.

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

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

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

17 (d) The applicant shall provide:

18 (1) Information in the application about whether the applicant has ever been arrested for
19 or convicted of any crime or wrongs, either done or threatened, against the government of the
20 United States;

21 (2) Information about offenses against the laws of West Virginia or any state; and

22 (3) Any facts as may be required by the Secretary of State to show the good character,
23 competency, and integrity of the applicant.

24 To qualify for a firm license, the applicant shall provide such information for each person
25 who will be authorized to conduct the private investigation business and for each officer, member
26 or partner of the firm.

27 (e) As part of the application, each applicant shall give the Secretary of State permission
28 to review the records held by the division of public safety for any convictions that may be on record
29 for the applicant.

30 (f) For each applicant for a license and for each officer, member, and partner of the firm
31 applying for a license, the application shall be accompanied by one recent full-face photograph
32 and one complete set of the person's fingerprints.

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

34 (1) Character references from at least five reputable citizens. Each reference must have
35 known the applicant for at least five years preceding the application. No reference may be
36 connected to the applicant by blood or marriage. All references must have been written for the
37 purpose of the application for a license to conduct the private investigation business; and

38 (2) A nonrefundable application processing service charge of \$50, which shall be payable
39 to the Secretary of State to offset the cost of license review and criminal investigation background
40 report, along with a license fee of \$100 if the applicant is an individual, or \$200 if the applicant is
41 a firm, or \$500 if the applicant is a nonresident of West Virginia or a foreign corporation or
42 business entity. The license fee shall be deposited to the General Revenue Fund, and shall be
43 refunded only if the license is denied.

44 (h) All applicants for private detective or private investigator licenses or for private
45 investigation firm licenses shall file in the office of Secretary of State a surety bond. Such bond
46 shall:

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

49 (2) Be written by a company recognized and approved by the Insurance Commissioner of
50 West Virginia and approved by the Attorney General of West Virginia with respect to its form. A
51 raised seal certification shall not be required for the purpose of a bond required under this section;

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

54 (i) Any person claiming against the bond required by §30-18-3(h) of this code for a violation
55 of this article may maintain an action at law against any licensed individual or firm and against the
56 surety. The surety shall be liable only for damages awarded under §30-18-12 of this code and not
57 the punitive damages permitted under that section. The aggregate liability of the surety to all
58 persons damaged by a person or firm licensed under this article may not exceed the amount of
59 the bond.

§30-18-5. Eligibility requirements to be licensed to conduct security guard business.

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

3 (1) Be at least 18 years of age;

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

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

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

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

13 (6) Be of good moral character;

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

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

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

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

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

21 (C) Buying or receiving stolen property;

22 (D) Entering a building unlawfully;

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

24 (F) Possessing or distributing illicit drugs;

25 (G) Any misdemeanor crime of domestic violence as defined in 18 U.S.C. § 921(a)(33); a
26 misdemeanor offense of assault or battery under §61-2-9(b), §61-2-9(c), or §61-2-28 of this code
27 in which the victim was a current or former spouse, current or former sexual or intimate partner,
28 person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's
29 child or ward, or a member of the defendant's household at the time of the offense; or a
30 misdemeanor offense with similar essential elements in a jurisdiction other than this state; and

31 ~~(G)~~ (H) Any misdemeanor involving moral turpitude or for which dishonesty of character
32 is a necessary element. ~~and~~

33 (10) Not having violated any provision of §30-18-8 of this code.

34 The provisions of this section shall not prevent the issuance of a license to any person
35 who, subsequent to his or her conviction, shall have received an executive pardon therefor,
36 removing this disability.

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

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

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

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

17 (d) The applicant shall provide:

18 (1) Information in the application about whether the applicant has ever been arrested for
19 or convicted of any crime or wrongs, either done or threatened, against the government of the
20 United States;

21 (2) Information about offenses against the laws of West Virginia or any state; and

22 (3) Any facts as may be required by the Secretary of State to show the good character,
23 competency, and integrity of the applicant.

24 To qualify for a firm license, the applicant shall provide such information for each person
25 who would be authorized to conduct security guard business under the applicant's firm license
26 and for each officer, member, or partner in the firm.

27 (e) As part of the application, each applicant shall give the Secretary of State permission
28 to review the records held by the West Virginia State Police for any convictions that may be on
29 record for the applicant.

30 (f) For each applicant for a license and for each officer, member, and partner of the firm
31 applying for a license, the application shall be accompanied by one recent full-face photograph
32 and one complete set of the person's fingerprints.

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

34 (1) Character references from at least five reputable citizens. Each reference must have
35 known the applicant for at least five years preceding the application. No reference may be
36 connected to the applicant by blood or marriage. All references must have been written for the
37 purpose of the application for a license to conduct security guard business; and

38 (2) A nonrefundable application processing service charge of \$50, which shall be payable
39 to the Secretary of State to offset the cost of license review and criminal investigation background
40 report, along with a license fee of \$100 if the applicant is an individual, or \$200 if the applicant is
41 a firm, or \$500 if the applicant is a nonresident of West Virginia or a foreign corporation or
42 business entity. The license fee shall be deposited to the General Revenue Fund, and shall be
43 refunded only if the license is denied.

44 (h) All applicants for security guard licenses or security guard firm licenses shall file in the
45 office of Secretary of State a surety bond. Such bond shall:

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

48 (2) Be written by a company recognized and approved by the Insurance Commissioner of
49 West Virginia and approved by the Attorney General of West Virginia with respect to its form. A
50 raised seal certification shall not be required for the purpose of a bond required under this section;

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

53 (i) Any person claiming against the bond required by §30-18-6(h) of this code for a violation
54 of this article may maintain an action at law against any licensed individual or firm and against the
55 surety. The surety shall be liable only for damages awarded under §30-18-12 of this code and not

56 the punitive damages permitted under that section. The aggregate liability of the surety to all
57 persons damaged by a person or firm licensed under this article may not exceed the amount of
58 the bond.

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

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

7 (a) The Secretary of State's authority and duties regarding the promulgation of rules
8 related to this article are as follows:

9 (1) The Secretary of State has authority to propose rules for legislative approval, in
10 accordance with the provisions of §29A-3-1 et seq. of this code, establishing state standards and
11 fee schedules for the licensing, registration, certification, regulation, renewal, reinstatement, and
12 continuing education of individuals who will conduct private investigation and security guard
13 businesses in this state.

14 (2) The Secretary of State shall propose rules for legislative approval requiring applicants
15 for licensing, registration, or certification to submit to a state and national criminal history record
16 check as set forth in this section and may deny licensing, registration, or certification based upon
17 the results of the criminal history record check.

18 ~~(b) The Secretary of State may propose for promulgation in accordance with the provisions~~
19 ~~of chapter twenty-nine-a of this code legislative rules necessary for the administration and~~
20 ~~enforcement of this article and for the issuance, suspension and revocation of licenses issued~~
21 ~~under the provisions of this article. The Secretary of State shall afford any applicant an opportunity~~
22 ~~to be heard in person or by counsel when a determination is made to deny, revoke or suspend an~~

23 applicant's license or application for license, including a renewal of a license. The applicant has
24 fifteen days from the date of receiving written notice of the Secretary of State's adverse
25 determination to request a hearing on the matter of denial, suspension or revocation. The action
26 of the Secretary of State in granting, renewing, or in refusing to grant or to renew, a license is
27 subject to review by the circuit court of Kanawha County or other court of competent jurisdiction.

28 (b) The secretary of state has authority to establish advisory boards as it deems
29 appropriate to encourage representative participation in subsequent rulemaking from groups or
30 individuals with an interest in any aspect of private investigation and/or security guard businesses.

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

37 ~~(d) The Secretary of State shall require each applicant to submit to a state and national~~
38 ~~criminal history record check, as set forth in this subsection:~~

39 ~~(1) The criminal history record check shall be based on fingerprints submitted to the West~~
40 ~~Virginia State Police or its assigned agent for forwarding to the Federal Bureau of Investigation.~~

41 ~~(2) The applicant shall meet all requirements necessary to accomplish the state and~~
42 ~~national criminal history record check, including:~~

43 ~~(A) Submitting fingerprints for the purposes set forth in this section; and~~

44 ~~(B) Authorizing the Secretary of State, the West Virginia State Police and the Federal~~
45 ~~Bureau of Investigation to use all records submitted and produced for the purpose of screening~~
46 ~~the applicant for a license.~~

47 ~~(3) The results of the state and national criminal history record check may not be released~~
48 ~~to or by a private entity except:~~

- 49 ~~(A) To the individual who is the subject of the criminal history record check;~~
50 ~~(B) With the written authorization of the individual who is the subject of the criminal history~~
51 ~~record check; or~~
52 ~~(C) Pursuant to a court order.~~
53 ~~(4) The criminal history record check and related records are not public records for the~~
54 ~~purposes of chapter twenty-nine-b of this code.~~
55 ~~(5) The applicant shall ensure that the criminal history record check is completed as soon~~
56 ~~as possible after the date of the original application for registration.~~
57 ~~(6) The applicant shall pay the actual costs of the fingerprinting and criminal history record~~
58 ~~check.~~

NOTE: The purpose of this bill is to prohibit applicants from licensure as a private investigator or security guard who have been convicted of crimes of domestic violence due to the sensitive nature of the profession; to require national certification for those individuals engaged in the expert field of fire/arson investigation; to clarify provisions relating to the bonding requirement by removing a raised seal certification of the bond; to modify the language of rulemaking authority for the secretary of state to modify fees for licensure, renewal and reinstatement without a code change as are consistent with other regulatory programs of the secretary of state's office.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.