

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

ENROLLED

House Bill 4749

BY DELEGATES HOWELL AND C. MARTIN

(BY REQUEST OF THE WEST VIRGINIA SECRETARY OF STATE)

[Passed March 7, 2020; in effect ninety days from
passage.]

1 AN ACT to amend and reenact §30-18-2, §30-18-3, §30-18-5, §30-18-6, §30-18-9, and §30-18-
2 10 of the Code of West Virginia, 1931, as amended, all relating to providing more efficient
3 application processes for private investigators, security guards, and firms; reducing
4 experience necessary for licensure as private investigator; allowing military service to be
5 included as experience that may be used for licensure; removing conviction for crime
6 involving moral turpitude or dishonesty as disqualification for licensure as private
7 investigator; removing unnecessary requirements for each private investigator and
8 security guard applicant to submit fingerprints and photographs of each applicant to the
9 Secretary of State; permitting private investigators, security guards, and private
10 investigator or security guard firms to obtain liability insurance in lieu of a surety bond;
11 increasing the amount of a surety bond; removing conviction for crime involving moral
12 turpitude or dishonesty as disqualification for licensure as security guard; increasing the
13 licensure renewal term of a private investigator, security guard, and private investigator or
14 security guard firms from one to two years; eliminating disparate application fee for foreign
15 individuals and businesses for private investigator, private investigator firm, security
16 guard, and security guard business licensure; and limiting amount of renewal fee.

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 one year 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; or

25 (F) Military service.

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

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

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

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

30 (C) Buying or receiving stolen property;

31 (D) Entering a building unlawfully;

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

33 (F) Possessing or distributing illicit drugs;

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

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

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

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

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

**§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 file an application with the Secretary of State
3 in a manner or method authorized 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 of such corporation and shall specify the name of the corporation, the date and
11 place of its incorporation, the names and titles of all officers, the location of its principal place of
12 business, and the name of the city, town or village, stating the street and number, and otherwise
13 such apt description as will reasonably indicate the location. If the corporation has been

14 incorporated in a state other than West Virginia, a certificate of good standing from the state of
15 incorporation must accompany the application. This information must be provided in addition to
16 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 West Virginia State Police for any convictions that may be on
29 record for the applicant.

30 (f) For each applicant applying for a license, the application shall be accompanied by one
31 recent full-face photograph.

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

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

37 (2) A nonrefundable application processing service charge of \$50, which shall be payable
38 to the Secretary of State to offset the cost of license review and criminal investigation background
39 report from the West Virginia State Police, along with a license fee of \$100 if the applicant is an

40 individual, or \$200 if the applicant is a firm. The license fee shall be deposited to the General
41 Revenue Fund and shall be refunded only if the license is denied.

42 (h) All applicants for private detective or private investigator licenses or for private
43 investigation firm licenses shall file in the office of Secretary of State a surety bond or sufficient
44 proof of liability insurance as required by the Secretary of State.

45 (i) If a surety bond is obtained in lieu of liability insurance, such bond shall:

46 (1) Be in the sum of \$5,000 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;

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

52 (j) Any person claiming against the bond required by subsection (i) of this section for a
53 violation of this article may maintain an action at law against any licensed individual or firm and
54 against the surety. The surety shall be liable only for damages awarded under §30-18-12 of this
55 code and not the punitive damages permitted under that section. The aggregate liability of the
56 surety to all persons damaged by a person or firm licensed under this article may not exceed the
57 amount of 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) Have had at least one year verified, full time employment conducting security guard
14 business or conducting the private investigation business working for a licensed firm or have one
15 year of substantially equivalent training or experience;

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

17 (8) Not have been convicted of any of the following:

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

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

20 (C) Buying or receiving stolen property;

21 (D) Entering a building unlawfully;

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

23 (F) Possessing or distributing illicit drugs; and

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

25 The provisions of this section shall not prevent the issuance of a license to any person
26 who, subsequent to his or her conviction, shall have received an executive pardon therefor,
27 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 file a written application, under oath, and file an application with the Secretary of State in a
3 manner or method authorized 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 of such corporation and shall specify the name of the corporation, the date and
11 place of its incorporation, the names and titles of all officers, the location of its principal place of
12 business, and the name of the city, town, or village, stating the street and number, and otherwise
13 such apt description as will reasonably indicate the location. If the corporation has been
14 incorporated in a state other than West Virginia, a certificate of good standing from the state of
15 incorporation must accompany the application. This information shall be provided in addition to
16 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;

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; and

24 (4) To qualify for a firm license, the same information for each person who would be
25 authorized to conduct security guard business under the applicant's firm license and for each
26 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, the application shall be accompanied by one recent
31 full-face photograph of the applicant.

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

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

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

42 (h) All applicants for security guard licenses or security guard firm licenses shall file in the
43 office of the Secretary of State a surety bond or sufficient proof of liability insurance as required
44 by the Secretary of State.

45 (i) If a surety bond is obtained in lieu of liability insurance, such bond shall:

46 (1) Be in the sum of \$5,000 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 the Attorney General of West Virginia with respect to its form;

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

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

56 surety to all persons damaged by a person or firm licensed under this article may not exceed the
57 amount of the bond.

§30-18-9. Renewal of license.

1 A license granted under the provisions of this article shall be in effect for two years from
2 the date the certificate of license is issued and may be renewed for a period of one year by the
3 Secretary of State upon application, in such form as the secretary may prescribe, and upon
4 payment of the fee and the filing of the surety bond or proof of liability insurance. At the time of
5 applying for renewal of a license, the Secretary of State may require any person to provide
6 additional information to reflect any changes in the original application or any previous renewal.
7 Any fee charged by the Secretary of State for renewal of a license shall not exceed \$50.

§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 (b) The Secretary of State may propose for promulgation in accordance with the provisions
8 of chapter 29A of this code legislative rules necessary for the administration and enforcement of
9 this article and for the issuance, suspension, and revocation of licenses issued under the
10 provisions of this article. The Secretary of State shall afford any applicant an opportunity to be
11 heard in person or by counsel when a determination is made to deny, revoke, or suspend an
12 applicant's license or application for license, including a renewal of a license. The applicant has
13 15 days from the date of receiving written notice of the Secretary of State's adverse determination
14 to request a hearing on the matter of denial, suspension, or revocation. The action of the Secretary

15 of State in granting, renewing, or in refusing to grant or to renew, a license is subject to review by
16 the circuit court of Kanawha County or other court of competent jurisdiction.

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

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

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

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

29 (A) Submitting fingerprints for the purposes set forth in this section, if required by the
30 Secretary of State, West Virginia State Police, or the Federal Bureau of Investigation; and

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

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

36 (A) To the individual who is the subject of the criminal history record check;

37 (B) With the written authorization of the individual who is the subject of the criminal history
38 record check; or

39 (C) Pursuant to a court order.

40 (4) The criminal history record check and related records are not public records for the
41 purposes of chapter 29B of this code.

42 (5) The applicant shall ensure that the criminal history record check is completed as soon
43 as possible after the date of the original application for registration.

44 (6) The applicant shall pay the actual costs of the fingerprinting and criminal history record
45 check.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2020.

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Governor