

H. B. 4512

(By Delegate Varner, Cann, Swartzmiller, Lawrence,
Morgan, Marshall and Stephens)

[Introduced February 13, 2012; referred to the
Committee on Government Organization then Finance.]

A BILL to amend and reenact §30-18-1, §30-18-2, §30-18-3, §30-18-4,
§30-18-5, §30-18-6, §30-18-7, §30-18-8, §30-18-9, §30-18-10,
§30-18-11, §30-18-12 and §30-18-13 of the Code of West
Virginia, 1931, as amended; and to amend said code by adding
thereto nine new sections, designated §30-18-14, §30-18-15,
§30-18-16, §30-18-17, §30-18-18, §30-18-19, §30-18-20, §30-18-
21 and §30-18-22, all relating to private investigative and
security services; providing unlawful acts; providing
definitions; creating the West Virginia Board of Private
Security and Investigators; providing for the appointment of
members of the board; providing powers and duties of the
board; providing rule-making authority to the board; creating
a special revenue account; providing eligibility requirements
for a license to conduct a private investigation business;
providing requirements for employees conducting a private
investigation under a firm license; providing eligibility

1 requirements to be licensed to conduct a security guard
2 business; providing requirements for employees conducting a
3 security guard business under a firm license; providing for
4 the renewal of a license; providing for complaints and
5 investigation procedures by the board; providing procedures
6 for hearings and the right to appeal; providing for judicial
7 review; providing criminal proceedings and penalties;
8 providing that a single act is evidence of practice; providing
9 for an action for damages for injury sustained by a violation
10 of this article; providing a grandfather clause for persons
11 licensed under this article on July 1, 2012; providing for the
12 transition from the Secretary of State to the board; and
13 providing for a report to the Joint Committee on Government
14 Organization.

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

16 That §30-18-1, §30-18-2, §30-18-3, §30-18-4, §30-18-5, §30-18-
17 6, §30-18-7, §30-18-8, §30-18-9, §30-18-10, §30-18-11, §30-18-12
18 and §30-18-13 of the Code of West Virginia, 1931, as amended, be
19 amended and reenacted; and that said code be amended by adding
20 thereto nine new sections, designated §30-18-14, §30-18-15, §30-18-
21 16, §30-18-17, §30-18-18, §30-18-19, §30-18-20, §30-18-21 and §30-
22 18-22, all to read as follows:

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

24 **§30-18-1. Unlawful acts.**

1 (a) It is unlawful for any person, business or firm to
2 practice or offer to practice private detective, investigative or
3 security guard services in this state without a license issued
4 under the provisions of this article, or advertise or use any title
5 or description tending to convey the impression that they are a
6 private detective, private investigator, security guard or security
7 guard firm unless the person has been duly licensed under the
8 provisions of this article, and the license has not expired, been
9 suspended or revoked.

10 (b) A business entity may not render any service or engage in
11 any activity which, if rendered or engaged in by an individual,
12 would constitute the practice of private investigator, private
13 detective or security guard services, except through a licensee.

14 (c) A person who is not licensed under this article as a
15 private investigator, private detective, or security guard firm may
16 not characterize himself or herself as "private detective",
17 "private investigator", "private detective or investigative firm",
18 "security guard", "security guard business" or "security guard
19 firm", notwithstanding the provisions of paragraph (B), subdivision
20 (6), section (3) and paragraph (B), subdivision (8), section (3) of
21 this article.

22 **§30-18-2. Applicable law.**

23 The professions licensed under the provisions of this article
24 are subject to article one of this chapter, the provisions of this
25 article, and any rules promulgated hereunder.

1 **§30-18-3. Definitions.**

2 For the purposes of this article, except where the context
3 clearly requires otherwise, the following terms shall have the
4 meanings ascribed to them:

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

13 (2) "Board" means the West Virginia Board of Private Security
14 and Investigators.

15 ~~(2)~~ (3) "Private investigation business" means the business of
16 doing an investigation or investigations, or surveillance, for
17 hire, reward or any other type of remuneration, to obtain
18 information about:

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

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

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

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

25 (E) The causes or origins of any fire, accident or injury to

1 any property, real or personal, or to identify or locate any person
2 or persons responsible for any such fire, accident or injury;

3 (F) The truth or falsity of any statement or representation,
4 whether written or oral, or of any type of depiction;

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

10 (H) The whereabouts of any missing or kidnapped person;

11 (I) The affiliation, connection or relationship of any person
12 with any corporation or other business entity, union, organization,
13 society or association, or with any official, member or
14 representative thereof;

15 (J) Any person or persons seeking employment in the place of
16 any employee or employees who have quit work by reason of any
17 strike; or

18 (K) The conduct, honesty, efficiency, loyalty or activities of
19 employees, agents, contractors and subcontractors.

20 ~~(3)~~ (4) "Firm license" means the license held by a person whom
21 the ~~Secretary of State~~ board has authorized to operate a private
22 detective investigative firm or security guard firm after ~~such~~ the
23 person has filed and completed an application pursuant to the
24 application requirements contained in sections ~~three and six~~ nine
25 or twelve and has satisfied the eligibility requirements contained

1 in sections ~~two or five~~ eight or eleven.

2 ~~(4)~~ (5) "Person" means a natural person, a group of persons or
3 individuals acting individually or as a group, a corporation,
4 company, partnership, association, society, firm, or any business
5 organization or entity organized or existing under the laws of this
6 or any other state or country;

7 ~~(5)~~ (6) (A) "Private detective" or "private investigator"
8 means a person who is licensed pursuant to the provisions of this
9 article to conduct a private investigation business, as defined in
10 subdivision ~~(2)~~ (3) of this section, and who conducts ~~such~~ the
11 business individually and independently from any private detective
12 or investigative firm;

13 (B) "Private detective" or "private investigator" does not
14 include:

15 (i) Any individual while acting as an adjuster for an
16 insurance company or companies;

17 (ii) Individuals employed exclusively and regularly by only
18 one employer in connection with the affairs of such employer only;

19 (iii) A ~~officer~~ guard or employee of the United States, or any
20 law-enforcement ~~officer~~ guard of this state or any political
21 subdivision thereof, while such ~~officer~~ guard or employee is
22 engaged in the performance of his official duties or while working
23 for a private employer in his off-duty hours;

24 (iv) Attorneys or counselors-at-law or any employee or
25 representative of such attorney or counselor;

1 (v) Any corporation duly authorized by this state to operate
2 central burglar or fire alarm protection business; or

3 (vi) Any investigator of crime appointed by a prosecuting
4 attorney of a county pursuant to the provisions of section two,
5 article four, chapter seven of this code.

6 ~~(6)~~ (7) "Private detective or investigative firm" means any
7 private detective agency or business or any investigative agency or
8 business that is operated by a licensed private detective or
9 investigator and which employs one or more other persons who
10 actually conduct the private investigation business as defined in
11 subdivision ~~(2)~~ (3) of this section.

12 ~~(7)~~ (8) (A) "Security guard" means a person who is licensed
13 pursuant to the provisions of this article to conduct a security
14 guard business, as defined in subdivision ~~(8)~~ (9) of this section,
15 and who conducts ~~such~~ the business individually and independently
16 from a security guard firm.

17 (B) "Security guard" does not include a person who is employed
18 exclusively and regularly by only one employer in connection with
19 the affairs of such employer only, or a person who is otherwise
20 hereinafter excluded from the requirements of this article;

21 ~~(8)~~ (9) (A) "Security guard business" means the business of
22 furnishing, for hire, reward or other remuneration, watchmen,
23 guards, bodyguards, private patrolmen or other persons, to:

24 (i) Protect property, real or personal, or any person;

25 (ii) To prevent theft, unlawful taking, misappropriation or

1 concealment of goods, wares or merchandise, money, bonds, stocks,
 2 notes or other valuable documents, papers and articles of value; or
 3 (iii) To furnish for hire, guard dogs or armored motor vehicle
 4 security services, in connection with the protection of persons or
 5 property;

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

10 ~~(9)~~ (10) "Security guard firm" means any security guard agency
 11 or business that is operated by a licensed security guard and which
 12 employs one or more other persons who actually conduct a security
 13 guard business as defined in subdivision ~~(8)~~ (9) of this section.

14 **§30-18-4. West Virginia Board of Private Security and**
 15 **Investigators.**

16 (a) The West Virginia Board of Private Security and
 17 Investigators is hereby created. There are nine members of the
 18 board who shall be appointed by the Governor beginning on July 1,
 19 2012, and shall serve until their respective terms expire or until
 20 their successors have been appointed and qualified. Of the members
 21 first appointed, three shall serve a term of one year, three shall
 22 serve a term of two years, and three shall serve a term of three
 23 years.

24 (b) To be effective July 1, 2012, the Governor shall appoint

1 to the board, by and with the advice and consent of the Senate, the
2 following:

3 (1) Two persons who are either a "private detective" or
4 "private investigator" and licensed pursuant to the provisions of
5 this article to conduct a private investigation business; and

6 (2) Two persons who are a "security guard business" and
7 licensed pursuant to the provisions of this article; and

8 (3) Two persons who possess a combined "private detective" or
9 "private investigator" and "security guard business" license
10 pursuant to the provisions of this article;

11 (4) One person who is a member of the State Bar;

12 (5) The Secretary of Military Affairs and Public Safety, or
13 his or her designee; and

14 (6) One citizen who does not perform any services related to
15 the practice of the professions regulated under the provisions of
16 this article or have a financial interest in any of the
17 professions.

18 (c) After the initial appointment term, the term for members
19 of the board shall be for three years. All appointments to the
20 board shall be made by the Governor by and with the advice and
21 consent of the Senate.

22 (d) Each member of the board must be a resident of this state
23 during the appointment term.

24 (e) A member may not serve more than three consecutive full
25 terms. A member may continue to serve until a successor has been

1 appointed and has qualified.

2 (f) A vacancy on the board shall be filled by appointment by
3 the Governor for the unexpired term of the member whose office is
4 vacant and the appointment shall be made within sixty days of the
5 vacancy.

6 (g) The Governor may remove any member from the board for
7 neglect of duty, incompetency or official misconduct.

8 (h) A licensed member of the board immediately and
9 automatically forfeits membership to the board if his or her
10 license to practice is suspended, revoked or expired.

11 (i) Any member of the board immediately and automatically
12 forfeits membership to the board if he or she is convicted of a
13 felony under the laws of any jurisdiction or becomes a nonresident
14 of this state.

15 (j) The board shall elect annually one of its members as
16 chairperson who serves at the will of the board.

17 (k) Each member of the board is entitled to compensation and
18 expense reimbursement in accordance with article one of this
19 chapter.

20 (l) A majority of the members of the board constitutes a
21 quorum.

22 (m) The board shall hold at least two meetings annually.
23 Other meetings may be held at the call of the chairperson or upon
24 the written request of four members, at the time and place as
25 designated in the call or request.

1 (n) Prior to commencing his or her duties as a member of the
2 board, each member shall take and subscribe to the oath required by
3 section five, article four of the Constitution of this state.

4 **§30-18-5. Powers and duties of the board.**

5 (a) The board has all the powers and duties set forth in this
6 article, by rule, in article one of this chapter and elsewhere in
7 law.

8 (b) The board shall:

9 (1) Establish requirements for licenses and permits;

10 (2) Establish procedures for submitting, approving and
11 rejecting applications for licenses;

12 (3) Determine the qualifications of any applicant for
13 licenses;

14 (4) Prepare, conduct, administer and grade examinations for
15 licenses;

16 (5) Determine the passing grade for the examinations;

17 (6) Maintain records of the examinations the board or a third
18 party administers, including the number of persons taking the
19 examinations and the pass and fail rate;

20 (7) Investigate alleged violations of the provisions of this
21 article, legislative rules, orders and final decisions;

22 (8) Conduct disciplinary hearings of persons regulated;

23 (9) Determine disciplinary action and issue orders;

24 (10) Institute appropriate legal action for the enforcement of
25 the provisions of this article;

1 (11) Maintain an accurate registry of names and addresses of
2 all licensees;

3 (12) Create a photo identification card for licensees;

4 (13) Keep accurate and complete records of its proceedings,
5 and certify the same as may be necessary and appropriate;

6 (14) Establish the continuing education requirements for
7 professional licensees;

8 (15) Issue, renew, combine, deny, suspend, revoke or reinstate
9 licenses and permits;

10 (16) Establish a fee schedule;

11 (17) Hire, discharge, establish the job requirements and fix
12 the compensation of the executive secretary;

13 (18) Propose rules in accordance with the provisions of
14 article three, chapter twenty-nine-a of this code to implement the
15 provisions of this article; and

16 (19) Take all other actions necessary and proper to effectuate
17 the purposes of this article.

18 (c) The board may:

19 (1) Contract with third parties to administer and grade the
20 examinations required under the provisions of this article;

21 (2) Sue and be sued in its official name as an agency of this
22 state; and

23 (3) Confer with the Attorney General or his or her assistant
24 in connection with legal matters and questions.

25 **§30-18-6. Rulemaking.**

1 The board may promulgate emergency rules and propose rules for
2 legislative approval, in accordance with the provisions of article
3 three, chapter twenty-nine-a of this code, to implement the
4 provisions of this article, including:

5 (1) Standards and requirements for licenses;

6 (2) Procedures for examinations and reexaminations;

7 (3) Requirements for third parties to prepare and/or
8 administer examinations and reexaminations;

9 (4) Educational and experience requirements;

10 (5) The passing grade on the examinations;

11 (6) Standards for approval of courses and curriculum;

12 (7) Procedures for the issuance and renewal of licenses;

13 (8) A fee schedule;

14 (9) Continuing education requirements for professional
15 licensees;

16 (10) The procedures for denying, suspending, revoking,
17 reinstating or limiting the practice of licensees;

18 (11) Requirements for inactive or revoked licenses or permits;

19 and

20 (12) Any other rules necessary to effectuate the provisions of
21 this article.

22 **§30-18-7. Fees; special revenue account; administrative fines.**

23 (a) All fees and other moneys, except administrative fines,
24 received by the board shall be deposited in a separate special
25 revenue account in the State Treasury designated the "West Virginia

1 Private Security and Investigators Fund". The fund is to be used
2 by the board for the administration of this article. Except as may
3 be provided in article one of this chapter, the board retains the
4 amount in the special revenue account from year to year. No
5 compensation or expense incurred under this article is a charge
6 against the General Revenue Fund.

7 (b) Any amount received as fines imposed pursuant to this
8 article shall be deposited into the General Revenue Fund of the
9 State Treasury.

10 **§30-18-8. Eligibility requirements for license to conduct the**
11 **private investigation business.**

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

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

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

17 (3) Not have had any previous license or authorization to
18 conduct a private investigation business or to conduct a security
19 guard business revoked or any application for any such licenses or
20 ~~registrations~~ authorization denied by the appropriate governmental
21 authority in this or any ~~other state or territory~~ jurisdiction;

22 (4) Not have been declared incompetent by reason of mental
23 defect or disease by any court of competent jurisdiction unless a
24 court has subsequently determined that the applicant's competency

1 has been restored;

2 (5) ~~Not suffer from habitual drunkenness or from narcotics~~
3 ~~addiction or dependence~~ Not be an alcohol or drug abuser as these
4 terms are defined in section eleven, article one-a, chapter twenty-
5 seven of this code;

6 (6) Be of good moral character;

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

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

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

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

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

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

20 (8) Not have been convicted of a felony in this state or any
21 other ~~state or territory~~ jurisdiction;

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

23 (A) Illegally using, carrying or possessing a firearm or other
24 dangerous weapon;

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

- 1 (C) Buying or receiving stolen property;
- 2 (D) Entering a building unlawfully;
- 3 (E) Aiding an inmate's escape from prison;
- 4 (F) Possessing or distributing illicit drugs;
- 5 (G) Any misdemeanor involving moral turpitude or for which
- 6 dishonesty of character is a necessary element; and
- 7 (10) Not have violated any provisions of section ~~eight one or~~
- 8 subdivisions (1) through (7), subsection (g), section fifteen of
- 9 this article.

10 (b) The provisions of this section ~~shall do~~ not prevent the

11 issuance of a license to any person who, subsequent to his or her

12 conviction, ~~shall have~~ has received an executive pardon therefor,

13 removing this disability.

14 ~~(b)~~ (c) Any person who qualifies for a private investigator's

15 license shall also be qualified to conduct security guard business

16 upon notifying the ~~Secretary of State~~ board in writing. ~~that the~~

17 ~~person will be conducting such business~~

18 ~~(c)~~ (d) No person may be employed as a licensed private

19 investigator while serving as magistrate.

20 **§30-18-9. Application requirements for a license to conduct the**

21 **private investigation business.**

22 (a) To be licensed to be a private detective, a private

23 investigator or to operate a private detective or investigative

24 firm, each applicant shall complete and file a written application,

1 under oath, with the ~~Secretary of State~~ board and in such form as
2 ~~the secretary may prescribe~~ prescribed by the board.

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

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

24 (d) The applicant shall provide:

25 (1) Information in the application about whether the applicant

1 has ever been arrested for or convicted of any crime or wrongs,
2 either done or threatened, against the government of the United
3 States;

4 (2) Information about offenses against the laws of West
5 Virginia or any ~~state~~ jurisdiction; and

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

9 To qualify for a firm license, the applicant shall provide
10 such information for each person who will be authorized to conduct
11 the private investigation business and for each ~~officer~~ guard,
12 member or partner of the firm.

13 (e) As part of the application, each applicant shall give the
14 ~~Secretary of State~~ board permission to review the records held by
15 ~~the Division of Public Safety~~ any relevant state or federal
16 agencies for any convictions that may be on record for the
17 applicant.

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

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

24 (1) Character references from at least five reputable
25 citizens. Each reference must have known the applicant for at

1 least five years preceding the application. No reference may be
2 connected to the applicant by blood or marriage. All references
3 must have been written for the purpose of the application for a
4 license to conduct the private investigation business; and

5 (2) A nonrefundable application processing service charge of
6 \$50, which shall be payable to the ~~Secretary of State~~ board to
7 offset the cost of license review and criminal investigation
8 background report from the ~~Department of Public Safety~~ West
9 Virginia State Police, along with a license fee of \$100 if the
10 applicant is an individual, or \$200 if the applicant is a firm, or
11 \$500 if the applicant is a nonresident of West Virginia or a
12 foreign corporation or business entity: Provided, That the board,
13 pursuant to the rule-making authority in section six of this
14 article, may modify the application and license fees as it deems
15 necessary to conduct the business of the board. ~~The license fee~~
16 ~~shall be deposited to the General Revenue Fund, and shall be~~
17 ~~refunded only if the license is denied.~~

18 (h) All applicants for private detective, ~~or~~ private
19 investigator licenses or for private investigation firm licenses
20 shall file ~~in the office of Secretary of State~~ with the board a
21 surety bond. Such bond shall:

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

24 (2) Be written by a company recognized and approved by the
25 Insurance Commissioner of West Virginia and approved by the

1 Attorney General of West Virginia with respect to its form;

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

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

13 **§30-18-10. Requirements for employees conducting the private**
14 **investigation business under a firm license.**

15 (a) Any person who has a private detective firm or
16 investigative firm license shall be responsible for supervising any
17 employee or other individual who conducts the private investigation
18 business under the authority of such person's firm license,
19 regardless of whether ~~such~~ the employee or other individual
20 receives compensation for conducting ~~such~~ the business. ~~Such~~ The
21 supervision shall include providing any education or training that
22 is reasonably necessary to ensure compliance with the requirements
23 of this article.

24 (b) Any employee or individual who conducts the private

1 investigation business under the authority of a private detective
2 or investigative firm license shall:

3 (1) Satisfy the requirements of section ~~two~~ eight of this
4 article, except that ~~such~~ the person need not satisfy the education
5 and training requirements contained in subdivision (7) of section
6 ~~two~~ eight; and

7 (2) Authorize the ~~Secretary of State~~ board to review the
8 records held by the ~~Division of Public Safety~~ West Virginia State
9 Police for any convictions that may be on record for ~~such~~ the
10 employee or individual.

11 (c) A holder of a private detective or investigative firm
12 license is prohibited from authorizing any individual or employee
13 to conduct a private investigation business if ~~such~~ the individual
14 does not comply with the requirements of this section.

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

23 (e) The employing firm shall issue identifying credentials for
24 each employee or individual who conducts the business of private
25 investigation under the authority of a private detective or

1 investigative firm license. An employee credential shall include
 2 the identification of the firm, bear the signature of the firm
 3 license holder to which employed and expire upon the same date as
 4 the firm license.

5 **§30-18-11. Eligibility requirements to be licensed to conduct**
 6 **security guard business.**

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

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

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

12 (3) Not have had any previous license or authorization to
 13 conduct a security guard business or to conduct a private
 14 investigation business revoked or any application for any such
 15 licenses or registrations denied by the appropriate governmental
 16 authority in ~~this or any other state or territory~~ any jurisdiction;

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

21 (5) ~~Not suffer from habitual drunkenness or from narcotics~~
 22 ~~addiction or dependence~~ Not be an alcohol or drug abuser as these
 23 terms are defined in section eleven, article one-a, chapter twenty-
 24 seven of this code;

1 (6) Be of good moral character;

2 (7) Have had at least ~~one year~~ two years verified, full-time
3 employment conducting security guard business or conducting the
4 private investigation business working for a licensed firm or have
5 one year of substantially equivalent training or ~~experience~~
6 education in any one of the following areas, or some combination
7 thereof:

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

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

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

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

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

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

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

21 (A) Illegally using, carrying or possessing a firearm or other
22 dangerous weapon;

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

24 (C) Buying or receiving stolen property;

25 (D) Entering a building unlawfully;

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

2 (F) Possessing or distributing illicit drugs;

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

5 (10) Not having violated any provision of section ~~eight~~
6 fifteen of this article.

7 (b) ~~The provisions of~~ This section ~~shall~~ may not prevent the
8 issuance of a license to any person who, subsequent to his or her
9 conviction, ~~shall have~~ has received an executive pardon therefor,
10 removing this disability.

11 **§30-18-12. Application requirements for a license to conduct**
12 **security guard business.**

13 (a) To be licensed as a security guard or to operate a
14 security guard firm, each applicant shall complete and file a
15 written application, under oath, with the ~~Secretary of State~~ board
16 and in such form as ~~the Secretary may prescribe~~ prescribed by the
17 board.

18 (b) On the application, each applicant shall provide the
19 following information: The applicant's name, birth date,
20 citizenship, physical description, military service, current
21 residence, residences for the preceding seven years, qualifying
22 education or experience, the location of each of his or her offices
23 in this state and any other information requested by the ~~Secretary~~
24 ~~of State~~ board in order to comply with the requirements of this

1 article.

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

15 (d) The applicant shall provide:

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

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

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

25 To qualify for a firm license, the applicant shall provide

1 such information for each person who would be authorized to conduct
2 security guard business under the applicant's firm license and for
3 each officer, member or partner in the firm.

4 (e) As part of the application, each applicant shall give the
5 ~~Secretary of State board~~ permission to review the records held by
6 ~~Department of Public Safety~~ any relevant state or federal agencies
7 for any convictions that may be on record for the applicant.

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

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

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

20 (2) A nonrefundable application processing service charge of
21 \$50, which shall be payable to the ~~Secretary of State board~~ to
22 offset the cost of license review and criminal investigation
23 background report from the ~~Department of Public Safety~~ West
24 Virginia State Police, along with a license fee of \$100 if the
25 applicant is an individual, or \$200 if the applicant is a firm, or

1 \$500 if the applicant is a nonresident of West Virginia or a
2 foreign corporation or business entity: Provided, That the board,
3 pursuant to the rule-making authority in section six of this
4 article, may modify the application and license fees as it deems
5 necessary to conduct the business of the board. ~~The license fee~~
6 ~~shall be deposited to the General Revenue Fund, and shall be~~
7 ~~refunded only if the license is denied.~~

8 (h) All applicants for security guard licenses or security
9 guard firm licenses shall file ~~in the office of Secretary of State~~
10 with the board a surety bond. Such bond shall:

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

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

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

19 (i) Any person claiming against the bond required by
20 subsection (h) of this section for a violation of this article may
21 maintain an action at law against any licensed individual or firm
22 and against the surety. The surety shall be liable only for
23 damages awarded under section ~~twelve~~ twenty of this article and not
24 the punitive damages permitted under that section. The aggregate
25 liability of the surety to all persons damaged by a person or firm

1 licensed under this article may not exceed the amount of the bond.

2 **§30-18-13. Requirements for employees conducting security guard**
3 **business under a firm license.**

4 (a) Any person who has a security guard firm license shall be
5 responsible for supervising any employee or other individual who
6 conducts security guard business under the authority of such
7 person's firm license, regardless of whether such employee or other
8 individual receives compensation for conducting such business.
9 ~~Such~~ The supervision shall include providing any education or
10 training that is reasonably necessary to ensure compliance with the
11 requirements of this article.

12 (b) Any employee or individual who conducts security guard
13 business under the authority of a firm license shall:

14 (1) Satisfy the requirements of section ~~five~~ eleven of this
15 article, except that ~~such~~ the person need not satisfy the prior
16 employment requirements contained in subdivision (7) of section
17 ~~five~~ eleven; and

18 (2) Authorize the ~~Secretary of State~~ board to review the
19 records held by the ~~Department of Public Safety~~ West Virginia State
20 Police for any convictions that may be on record for such employee
21 or individual.

22 (c) A holder of a security guard firm license is prohibited
23 from authorizing any individual or employee to conduct security
24 guard business if such individual does not comply with the

1 requirements of this section.

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

9 **§30-18-14. Renewal of license.**

10 A license granted under the provisions of this article shall
11 be in effect for one year from the date the certificate of license
12 is issued and may be renewed for a period of one year by the
13 ~~Secretary of State~~ board upon application, in ~~such~~ a form as the
14 ~~secretary~~ board may prescribe, and upon payment of the license fee
15 and the filing of the surety bond. At the time of applying for
16 renewal of a license, the ~~Secretary of State~~ board may require any
17 person to provide additional information to reflect any changes in
18 the original application or any previous renewal.

19 **§30-18-15. Complaints; investigations; due process procedure;**
20 **grounds for disciplinary action.**

21 (a) The board may, based on credible information, and shall
22 upon the written complaint of any person, cause an investigation to
23 be made to determine whether grounds exist for disciplinary action
24 under this article or the legislative rules.

1 (b) Upon initiation or receipt of the complaint, the board
2 shall provide a copy of the complaint to the licensee.

3 (c) After reviewing any information obtained through an
4 investigation, the board shall determine if probable cause exists
5 that the licensee has committed a violation of any of the acts
6 contained in sections (8) or (11) of this article or rules
7 promulgated pursuant to this article.

8 (d) Upon a finding that probable cause exists that the
9 licensee has violated any of the acts contained in subdivisions (1)
10 through (7), subsection (g) or rules promulgated pursuant to this
11 article, the board may enter into a consent decree or hold a
12 hearing for the suspension or revocation of the license or the
13 imposition of sanctions against the licensee.

14 (e) The board may issue subpoenas and subpoenas duces tecum to
15 obtain testimony and documents to aid in the investigation of
16 allegations against any person regulated by the article.

17 (f) The board may sign a consent decree or other legal
18 document.

19 (g) The board may, after notice and opportunity for hearing,
20 deny or refuse to renew, suspend or revoke the license of, impose
21 probationary conditions upon or take disciplinary action against,
22 any licensee for any of the following reasons once a violation has
23 been proven by a preponderance of the evidence:

24 (1) Obtaining a license by fraud, misrepresentation or
25 concealment of material facts;

1 (2) Being convicted of a felony or other crime involving moral
2 turpitude;

3 (3) Being guilty of unprofessional conduct which placed the
4 public at risk, as defined by legislative rule;

5 (4) Intentional violation of a lawful order or legislative
6 rule;

7 (5) Having had a license or other authorization revoked or
8 suspended, other disciplinary action taken, or an application for
9 licensure or other authorization revoked or suspended by the proper
10 authorities of another jurisdiction;

11 (6) Aiding or abetting unlicensed practice; or

12 (7) Engaging in an act while acting in a professional capacity
13 which has endangered or is likely to endanger the health, welfare
14 or safety of the public.

15 (h) It is unlawful for any person subject to the provisions of
16 this article to knowingly commit any of the following:

17 (1) Employ any individual to perform the duties of an employee
18 who has not first complied with all provisions of this article and
19 the adopted regulations;

20 (2) Falsely represent that a person is the holder of a valid
21 license;

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

24 (4) Divulge any information acquired from or for a client to
25 persons other than the client or his or her authorized agent

1 without express authorization to do so or unless required by law;

2 (5) Accept employment which includes obtaining information
3 intended for illegal purposes;

4 (6) Authorize or permit another person to violate any
5 provision of this article or any rule of the board adopted for this
6 article.

7 (i) For the purposes of subsection (g) of this section,
8 disciplinary action may include:

9 (1) Reprimand;

10 (2) Probation;

11 (3) Administrative fine, not to exceed \$1,000 per day per
12 violation;

13 (4) Mandatory attendance at continuing education seminars or
14 other training;

15 (5) Practicing under supervision or other restriction;

16 (6) Requiring the licensee to report to the board for periodic
17 interviews for a specified period of time; or

18 (7) Other corrective action considered by the board to be
19 necessary to protect the public, including advising other parties
20 whose legitimate interests may be at risk.

21 **§30-18-16. Procedures for hearing; right of appeal.**

22 (a) Hearings are governed by the provisions of article five,
23 chapter twenty-nine-A.

24 (b) An administrative law judge shall conduct the hearing.

25 (c) At the conclusion of a hearing, the administrative law

1 judge shall prepare a proposed written order containing findings of
2 fact and conclusions of law. The proposed order may contain
3 proposed disciplinary actions if the board so directs. The board
4 may accept, reject or modify the decision of the administrative law
5 judge.

6 (d) The board has the authority to administer oaths, examine
7 any person under oath and issue subpoenas and subpoenas duces
8 tecum.

9 (e) If, after a hearing, the board determines the licensee has
10 violated any of the acts contained in subdivisions (1) through (7),
11 subsection (g), section fifteen of this article or the rules, a
12 formal written decision shall be prepared which contains findings
13 of fact, conclusions of law and a specific description of the
14 disciplinary actions imposed.

15 **§30-18-17. Judicial review.**

16 Any licensee affected by a decision of the board entered after
17 a hearing may obtain judicial review of the decision in accordance
18 with section four, article five, chapter twenty-nine-a of this
19 code, and may appeal any ruling resulting from judicial review in
20 accordance with article six, chapter twenty-nine-a of this code.

21 **§30-18-18. Criminal proceedings; penalties.**

22 (a) When, as a result of an investigation under this article
23 or otherwise, the board has reason to believe that a licensee, has
24 committed a criminal offense under this article, the board shall

1 bring its information to the attention of an appropriate law-
2 enforcement official.

3 (b) A person violating a provision of this article is guilty
4 of a misdemeanor and, upon conviction thereof, shall be fined not
5 less than \$1,000 nor more than \$10,000 or confined in jail not more
6 than six months, or both fined and confined.

7 **§30-18-19. Single act evidence of practice.**

8 In any action brought or in any proceeding initiated under
9 this article, evidence of the commission of a single act prohibited
10 by this article is sufficient to justify a penalty, injunction,
11 restraining order or conviction without evidence of a general
12 course of conduct.

13 **§30-18-20. Action for damages.**

14 Any individual who is injured by a violation of the provisions
15 of this article may bring an action for recovery of damages,
16 including punitive damages plus reasonable attorney's fees and
17 court costs.

18 **§30-18-21. Grandfather provision.**

19 Any person who holds a valid license in this state on July 1,
20 2012, shall be recognized as a private detective, private
21 investigator, security guard or security guard firm and shall be
22 entitled to retain this status so long as the person complies with
23 the provisions of this article.

24 **§30-18-22. Transition from the Secretary of State to the Board of**

1 Private Security and Investigators; and Report to
2 the Joint Committee on Government Organization.

3 (a) In order to implement an orderly and efficient transition
4 from the Secretary of State to the West Virginia Board of Private
5 Security and Investigators, the Secretary of State and board may
6 establish interim policies and procedures for the transfer of
7 authority to administer and enforce this article: *Provided, That*
8 any fees collected after June 30, 2012 shall be deposited in
9 accordance with section seven of this article.

10 (b) On the effective date of this article, all records
11 necessary to effectuate the purposes of this article shall be
12 transferred from the Secretary of State to the board: *Provided,*
13 That the transfer of records provided in this subsection shall
14 take place no later than November 1, 2012.

15 (c) The board, with the assistance of other interested parties
16 shall study the private security industry. On or before January 1,
17 2013, the board shall submit a report to the Joint Committee on
18 Government Organization on the activities of the board in the
19 administration of this article. The report shall include:

20 (1) Types of licensure;

21 (2) Qualifications and training of applicants, including any
22 continuing education of licensees;

23 (3) Licensure fees;

24 (4) Powers and responsibilities of licensees; and

1 (5) Any other statutory change.

NOTE: The purpose of this bill is to transfer the authority to license private security services from the Secretary of State to the West Virginia Board of Private Security and Investigations. The bill provides for the redesignation of several sections of the article as follows:

Former Code Section	Code Section as Amended by this bill
§30-18-1	§30-18-3
§30-18-2	§30-18-8
§30-18-3	§30-18-9
§30-18-4	§30-18-10
§30-18-5	§30-18-11
§30-18-6	§30-18-12
§30-18-7	§30-18-13
§30-18-9	§30-18-14
§30-18-12	§30-18-20

Former code §30-18-8, §30-18-10, §30-18-11 and §30-18-13 have been entirely rewritten and were not redesignated in this bill.

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