

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4747

BY DELEGATES HOWELL AND C. MARTIN

[BY REQUEST OF THE SECRETARY OF STATE]

[Introduced February 07, 2020; Referred to the
Committee on Government Organization]

1 A BILL to amend and reenact §29-19-2, §29-19-5, §29-19-6, and §29-19-9 of the Code of West
2 Virginia, 1931, as amended; to amend and reenact §30-18-1, §30-18-3, §30-18-6, and
3 §30-18-10 of said code; to amend and reenact §39-4A-2 of said code; and to amend and
4 reenact §47-2-1 and §47-2-3, all relating generally to extending current laws allowing
5 electronic submission of applications and forms to the Secretary of State’s Office relating
6 to licensure or regulation charities, nonprofit organizations, private investigators and firms,
7 security guards and firms, out-of-state commissioners, and trademarks; providing new
8 definitions for the term “sign” and “signature” relating to applications or forms in the
9 foregoing regulated industries; providing for more efficient application processes in the
10 foregoing regulated industries; and technical typographical changes to distinguish the
11 Secretary of State from an entity’s secretary or administrative assistant.

Be it enacted by the Legislature of West Virginia:

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.

§29-19-2. Definitions.

1 As used in this article:

2 (1) “Audit” means the systematic examination of records and documents and the securing
3 of other evidence by confirmation, physical inspection, or otherwise, that includes a written
4 assurance that financial statements and reports are fairly presented in conformity with generally
5 accepted accounting principles issued by the American Institute of Certified Public Accountants.

6 (2) “Charitable organization” means a person who is or holds itself out to be a benevolent,
7 educational, philanthropic, humane, patriotic, religious or eleemosynary organization, or any
8 person who solicits or obtains contributions solicited from the public for charitable purposes, or
9 any person who in any manner employs any appeal for contributions which may be reasonably
10 interpreted to suggest that any part of those contributions will be used for charitable purposes. A

11 chapter, branch, area, office or similar affiliate or any person soliciting contributions within the
12 state for a charitable organization which has its principal place of business outside the state is a
13 charitable organization for the purposes of this article.

14 (3) "Contribution" means the promise or grant of any money or property of any kind or
15 value.

16 (4) "Financial review" means an examination of financial statements in accordance with
17 generally accepted accounting principles issued by the American Institute of Certified Public
18 Accountants, in which a certified public accountant has a reasonable basis for expressing limited
19 assurance that the reviewed statements are free of material misstatements or false or missing
20 information and are found to be accurate, complete and fairly presented to meet the requirements
21 of the generally accepted accounting principles.

22 (5) "Solicit" and "solicitation" means the request or appeal, directly or indirectly, for any
23 contribution on the plea or representation that the contribution will be used for a charitable
24 purpose, including, without limitation, the following methods of requesting a contribution:

25 (A) Any oral or written request;

26 (B) Any announcement to the press, over the radio or television, or by telephone,
27 electronic mail or messaging, electronic bulletin board, or Internet technology, concerning an
28 appeal or campaign to which the public is requested to make a contribution for any charitable
29 purpose connected therewith;

30 (C) The distribution, circulation, posting or publishing of any handbill, written
31 advertisement or other publication which directly or by implication seeks to obtain public support;
32 or

33 (D) The sale of, offer or attempt to sell, any advertisement, advertising space, subscription,
34 ticket or any service or tangible item in connection with which any appeal is made for any
35 charitable purpose or where the name of any charitable or civic organization is used or referred
36 to in an appeal as an inducement or reason for making the sale, or when or where in connection

37 with the sale, any statement is made that the whole, or any part of, the proceeds from the sale
38 will be donated to any charitable purpose.

39 "Solicitation", as defined herein, occurs when the request is made, at the place the request
40 is received, whether or not the person making the request actually receives any contribution.

41 (6) "Federated fund-raising organization" means a federation of independent charitable
42 organizations which have voluntarily joined together, including, but not limited to, a united fund or
43 community chest, for purposes of raising and distributing money for and among themselves and
44 where membership does not confer operating authority and control of the individual agencies
45 upon the federated group organization.

46 (7) "Parent organization" is that part of a charitable organization which coordinates,
47 supervises or exercises control over policy, fund raising and expenditures, or assists, receives
48 funds from or advises one or more chapters, branches or affiliates in the state.

49 (8) "Person" means any individual, organization, trust, foundation, group, association,
50 partnership, corporation, society or any combination of them.

51 (9) "Professional fund-raising counsel" means any person who for a flat fixed fee under a
52 written agreement plans, conducts, manages, carries on, advises or acts as a consultant, whether
53 directly or indirectly, in connection with soliciting contributions for, or on behalf of any charitable
54 organization but who actually solicits no contributions as a part of the services. A bona fide
55 salaried officer or employee of a charitable organization maintaining a permanent establishment
56 within the state is not a professional fund-raising counsel.

57 (10) "Professional solicitor" means any person who, for a financial or other consideration,
58 solicits contributions for, or on behalf of a charitable organization, whether the solicitation is
59 performed personally or through that person's agents, servants or employees specially employed
60 by, or for a charitable organization, who are engaged in the solicitation of contributions under the
61 direction of that person, or a person who plans, conducts, manages, carries on, advises or acts
62 as a consultant to a charitable organization in connection with the solicitation of contributions but

63 does not qualify as “professional fund-raising counsel” within the meaning of this article. A bona
64 fide salaried officer or employee of a charitable organization maintaining a permanent
65 establishment within the state is not a professional solicitor.

66 No attorney, investment counselor or banker, who advises any person to make a
67 contribution to a charitable organization, is considered, as the result of the advice, a professional
68 fund-raising counsel or a professional solicitor.

69 (11) “Sign” means the action of affixing a person’s signature to any document or record,
70 whether by manual, written, or approved electronic means.

71 (12) “Signature” means any mark, symbol, facsimile, or electronic mark or symbol, that
72 depicts a person’s name on any document or record, affixed to the document or record by the
73 person with the intent to authenticate, assert, certify, or agree to the matters, validity, information,
74 or attestation set forth in the document or record.

§29-19-5. Registration of charitable organizations; fee.

1 (a) Every charitable organization, except as provided in section six of this article, which
2 intends to solicit contributions, donations or grants within this state or to have funds solicited or
3 received on its behalf shall, prior to any solicitation, ~~file a registration statement~~ register with the
4 Secretary of State, in a manner or method authorized and upon forms prescribed by him or her
5 which shall be good for one full year and which shall be refiled in the next and each following year
6 in which the charitable organization is engaged in solicitation activities. If an organization
7 discontinues solicitation at any time after its last registration filing, then it shall file a registration
8 statement reflecting its activities during its last fiscal year in which solicitation in West Virginia took
9 place. The president, chairman, or principal officer of the charitable organization-~~sworn to~~ signed
10 by an authorized agent of the charitable organization shall file the statements required under this
11 article. The statements shall be sworn to and shall contain the following information:

12 (1) The name of the organization and the purpose for which it was organized;

13 (2) The principal address of the organization and the address of any offices in this state.

14 If the organization does not maintain an office, the name and address of the person having
15 custody of its financial records;

16 (3) The names and addresses of any chapters, branches or affiliates in this state;

17 (4) The place where and the date when the organization was legally established and the
18 form of its organization;

19 (5) The names and addresses of the officers, directors, trustees and the principal salaried
20 executive staff officer;

21 (6) A copy of a balance sheet and a statement or report of income and expenses for the
22 organization's immediately preceding fiscal year or a financial statement reporting information
23 showing the kind and amount of funds raised during the preceding fiscal year, the costs and
24 expenses incidental to the fundraising and showing how the funds were disbursed or allocated
25 for the same fiscal year: *Provided*, That in addition to the financial documents required by this
26 subdivision:

27 (A) Charitable organizations raising more than \$500,000 per year in contributions,
28 excluding grants from governmental agencies or private foundations, shall submit a report of an
29 audit by an independent certified public accountant; and

30 (B) Charitable organizations raising more than \$200,000 per year, but less than \$500,000
31 per year in contributions, excluding grants from governmental agencies or private foundations,
32 shall submit a statement of financial review by an independent certified public accountant;

33 (7) A copy of any determination of the organization's tax-exempt status under the
34 provisions of 26 U.S.C. §501(c)(3) and a copy of the last filed Internal Revenue Service Form 990
35 and Schedule A for every charitable organization and any parent organization;

36 (8) Whether the organization intends to solicit contributions, donations or grants from the
37 public directly or have other solicitation done on its behalf by others;

38 (9) Whether the organization is authorized by any other governmental authority to solicit
39 contributions, donations or grants and whether it is or has ever been enjoined by any court from

40 soliciting contributions;

41 (10) The general purpose or purposes for which the contributions to be solicited shall be
42 used;

43 (11) The name or names under which it intends to solicit contributions;

44 (12) The names of the individuals or officers of the organization who will have final
45 responsibility for the custody of the contributions;

46 (13) The names of the individuals or officers of the organization responsible for the final
47 distribution of the contributions;

48 (14) Copies of all contract documentation from professional fund-raising counsels and
49 professional solicitors as provided in subsection (d), section seven of this article; and

50 (15) The amount of money received in the state and the amount spent in the state for
51 charitable purposes.

52 (b) Each chapter, branch or affiliate, except an independent member agency of a
53 federated fundraising organization, may separately report the information required by this section
54 or report the information to its parent organization which shall then furnish the information
55 regarding its West Virginia affiliates, chapters and branches in a consolidated form to the
56 Secretary of State. An independent member agency of a federated fundraising organization, as
57 defined in section two of this article, shall comply with the provisions of this article independently.
58 Each organization shall file a separate registration form for each name under which funds will be
59 solicited.

60 (c) The registration forms and any other documents prescribed by the Secretary of State
61 shall be signed by an authorized agent, officer or by an independent public accountant and by the
62 chief fiscal officer of the charitable organization. ~~and shall be verified under oath~~

63 (d) Every charitable organization receiving less than \$1 million during any year which
64 submits an independent registration to the Secretary of State shall pay an annual registration fee
65 of \$15; every charitable organization collecting more than \$1 million during one year which

66 submits an independent registration to the Secretary of State shall pay an annual registration fee
67 of \$50; and a parent organization filing on behalf of one or more chapters, branches or affiliates
68 or a single organization filing under different names shall pay a single annual registration fee of
69 \$50 for itself and the chapters, branches or affiliates included in the registration statement. All
70 fees and moneys collected by the Secretary of State pursuant to the provisions of this article shall
71 be deposited by the Secretary of State as follows: One-half shall be deposited in the State General
72 Revenue Fund and one-half shall be deposited in the services fees and collections account
73 established by §59-1-2 of this code for the operation of the office of the Secretary of State. The
74 Secretary of State shall dedicate sufficient resources from that fund or other funds to provide the
75 services required in this article.

76 (e) For good cause shown, the Secretary of State may extend the due date for the annual
77 filing of a registration statement or report by a charitable organization or a professional fundraiser
78 for a period not to exceed 90 days. During that period, the previously filed registration statement
79 or report of the charitable organization which has been granted the extension remains in effect.

80 (f) In addition to the registration fee required by this section, a charitable organization or
81 professional fundraiser, or both, which fails to file a registration statement or report by the original
82 or extended due date for filing as required by this section shall, for each month or part of the
83 month thereafter in which the registration statement or report is not filed, pay an additional fee of
84 \$25: *Provided*, That the total amount of the additional fees for a registration statement or report
85 required to be filed in any one year may not exceed \$500. All fees and moneys collected by the
86 Secretary of State pursuant to the provisions of this article shall be deposited by the Secretary of
87 State as follows: One-half shall be deposited in the State General Revenue Fund and one-half
88 shall be deposited in the service fees and collections account established by §59-1-2 of this code
89 for the operation of the office of the Secretary of State. The Secretary of State shall dedicate
90 sufficient resources from that fund or other funds to provide the services required in this article.

§29-19-6. Certain persons and organizations exempt from registration.

1 The following charitable organizations are not required to file an annual registration
2 statement with the Secretary of State:

3 (1) Educational institutions, the curriculums of which, in whole or in part, are registered or
4 approved by the State Board of Education, either directly or by acceptance of accreditation by an
5 accrediting body recognized by the State Board of Education; and any auxiliary associations,
6 foundations and support groups which are directly responsible to the educational institutions;

7 (2) Persons requesting contributions for the relief of any individual specified by name at
8 the time of the solicitation when all of the contributions collected without any deductions
9 whatsoever are turned over to the named beneficiary for his or her use;

10 (3) Hospitals and licensed nursing homes which are nonprofit and charitable;

11 (4) Organizations which solicit only within the membership of the organization by the
12 members thereof: *Provided*, That the term "membership" does not include those persons who are
13 granted a membership upon making a contribution as the result of solicitation. For the purpose of
14 this section, "member" means a person having membership in a nonprofit corporation, or other
15 organization, in accordance with the provisions of its articles of incorporation, bylaws or other
16 instruments creating its form and organization; and having bona fide rights and privileges in the
17 organization, including the right to vote, to elect officers, directors and issues, to hold office or
18 otherwise as ordinarily conferred on members of the organizations;

19 (5) Churches, synagogues, associations or conventions of churches, religious orders or
20 religious organizations that are an integral part of a church which qualifies as tax exempt under
21 the provisions of 26 U.S.C. §501(c)(3) and which qualifies as being exempt from filing an annual
22 return under the provisions of 26 U.S.C. §6033;

23 (6) Any person, firm, corporation or organization that sponsors a single fundraising event
24 for the benefit of a named charitable organization where all or part of the funds collected are
25 donated to the named charitable organization: *Provided*, That the named charitable organization
26 receiving the funds is registered pursuant to this article, reports each of these donations

27 individually and certifies that no funds were withheld by the organization that solicited the funds;

28 (7) Any charitable organization that does not employ a professional solicitor or fundraiser
 29 and does not intend to solicit and receive and does not actually raise or receive contributions,
 30 donations or grants from the public in excess of ~~\$25,000~~ \$50,000 during a calendar year.

31 Charitable organizations which do not intend to solicit and receive contributions, donations
 32 or grants in excess of ~~\$25,000~~ \$50,000, but do receive in excess of that amount from the public,
 33 shall file the annual registration statement within 30 days after contributions are in excess of
 34 ~~\$25,000~~ \$50,000.

**§29-19-9. Registration of professional fundraising counsel and professional solicitor;
 bonds; records; books.**

1 (a) No person may act as a professional fundraising counsel or professional solicitor for a
 2 charitable organization subject to the provisions of this article unless he or she has first registered
 3 with the Secretary of State. ~~Applications for the~~ The registration application shall be submitted in
 4 ~~writing under oath or affirmation in the form prescribed~~ a manner or method authorized by the
 5 Secretary of State and contain the information he or she requires. ~~The application for~~ registration
 6 application by professional fundraising counsel or professional solicitor shall be accompanied by
 7 an annual fee in the sum of \$100. A partnership or corporation, which is a professional fundraising
 8 counsel or professional solicitor, may register for and pay a single fee on behalf of all its members,
 9 officers, agents and employees. However, the names and addresses of all officers, agents and
 10 employees of professional fundraising counsel and all professional solicitors, their officers,
 11 agents, servants or employees employed to work under the direction of a professional solicitor
 12 shall be listed in the application. All fees and moneys collected by the Secretary of State pursuant
 13 to the provisions of this article shall be deposited by the Secretary of State as follows: One-half
 14 shall be deposited in the state General Revenue Fund and one-half shall be deposited in the
 15 service fees and collections account established by §59-1-2 of this code for the operation of the
 16 office of the Secretary of State. The Secretary of State shall dedicate sufficient resources from

17 that fund or other funds to provide the services required in this article.

18 (b) The applicant shall, at the time of the making of an application, file with and have
 19 approved by the Secretary of State a bond in which the applicant shall be the principal obligor in
 20 the sum of \$10,000 and which shall have one or more sureties satisfactory to the Secretary of
 21 State whose liability in the aggregate as such sureties will at least equal the said sum and maintain
 22 the bond in effect so long as a registration is in effect. The bond shall run to the state for the use
 23 of the Secretary of State and any person who may have a cause of action against the obligor of
 24 the bonds for any losses resulting from malfeasance, nonfeasance or misfeasance in the conduct
 25 of solicitation activities. A partnership or corporation which is a professional fundraising counsel
 26 or professional solicitor may file a consolidated bond on behalf of all its members, officers and
 27 employees.

28 (c) Each registration is valid throughout the state for a period of one year and may be
 29 renewed for additional one-year periods upon ~~written~~ application submitted to the Secretary of
 30 State in a manner or method authorized and under oath in the form prescribed by the Secretary
 31 of State and the payment of the fee prescribed in this section.

32 (d) The Secretary of State or his or her designee shall examine each application and if he
 33 or she finds it to be in conformity with the requirements of this article and all relevant rules and
 34 the registrant has complied with the requirements of this article and all relevant rules, he or she
 35 shall approve the registration.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 18. PRIVATE INVESTIGATIVE AND SECURITY SERVICES.

§30-18-1. Definitions.

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

3 (1) "Applicant" means a person who files a completed application as required by sections

4 three and six of this article to be licensed to conduct a private investigation business or a security
5 guard business. When a person other than a natural person is applying for a license, the applicant
6 shall be the person whose qualifications are presented to meet the experience or education
7 requirements of sections two or five of this article.

8 (2) "Private investigation business" means the business of doing an investigation or
9 investigations, for hire, reward or any other type of remuneration, to obtain information about:

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

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

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

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

15 (E) The causes or origins of any fire, accident or injury to any property, real or personal,
16 or to identify or locate any person or persons responsible for any such fire, accident or injury;

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

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

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

23 (I) The affiliation, connection or relationship of any person with any corporation or other
24 business entity, union, organization, society or association, or with any official, member or
25 representative thereof;

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

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

30 (3) "Firm license" means the license held by a person whom the Secretary of State has
31 authorized to operate a private detective investigative firm or security guard firm after such person
32 has filed and completed an application pursuant to the application requirements contained in
33 sections three or six of this article and has satisfied the eligibility requirements contained in
34 sections two or five of this article.

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

38 (5) (A) "Private detective" or "private investigator" means a person who is licensed
39 pursuant to the provisions of this article to conduct a private investigation business, as defined in
40 subdivision (2) of this section, and who conducts such business individually and independently
41 from any private detective or investigative firm;

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

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

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

46 (iii) An officer or employee of the United States, or any law-enforcement officer of this state
47 or any political subdivision thereof, while such officer or employee is engaged in the performance
48 of his or her official duties or while working for a private employer in his or her off-duty hours;

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

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

53 ~~(vii)~~(vi) Any investigator of crime appointed by a prosecuting attorney of a county pursuant
54 to the provisions §7-4-2 of this code.

55 (6) "Private detective or investigative firm" means any private detective agency or business

56 or any investigative agency or business that is operated by a licensed private detective or
57 investigator and which employs one or more other persons who actually conduct the private
58 investigation business as defined in subdivision (2) of this section.

59 (7) (A) "Security guard" means a person who is licensed pursuant to the provisions of this
60 article to conduct a security guard business, as defined in subdivision (8) of this section, and who
61 conducts such business individually and independently from a security guard firm.

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

65 (8) (A) "Security guard business" means the business of furnishing, for hire, reward or
66 other remuneration, watchmen, guards, bodyguards, private patrolmen or other persons, to:

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

68 (ii) To prevent theft, unlawful taking, misappropriation or concealment of goods, wares or
69 merchandise, money, bonds, stocks, notes or other valuable documents, papers and articles of
70 value; or

71 (iii) To furnish for hire, guard dogs or armored motor vehicle security services, in
72 connection with the protection of persons or property;

73 (B) "Security guard business" does not include any activities or duties for which it is
74 necessary to be trained and certified as a law-enforcement officer in accordance with the
75 provisions of §30-29-1 *et seq.* of this code.

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

1 (10) "Sign" means the action of affixing a person's signature to any document or record,
2 whether by manual, written or approved electronic means.

3 (11) "Signature" means any mark, symbol, facsimile or electronic mark or symbol, that

4 depicts a person's name on any document or record, affixed to the document or record by the
5 person with the intent to authenticate, assert, certify or agree to the matters, validity, information
6 or attestation set forth in the document or record.

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

7 (a) To be licensed to be a private detective, a private investigator or to operate a private
8 detective or investigative firm, each applicant shall ~~complete and file a written~~ an application under
9 ~~oath~~ with the Secretary of State in a manner or method authorized and in such form as the
10 secretary may prescribe.

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

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

24 (d) The applicant shall provide:

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

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

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

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

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

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

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

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

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

51 ~~(h) All applicants for private detective or private investigator licenses or for private~~
52 ~~investigation firm licenses shall file in the office of Secretary of State a surety bond. Such bond~~
53 ~~shall:~~

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

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

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

60 ~~(i) Any person claiming against the bond required by subsection (h) of this section for a~~
 61 ~~violation of this article may maintain an action at law against any licensed individual or firm and~~
 62 ~~against the surety. The surety shall be liable only for damages awarded under section twelve of~~
 63 ~~this article and not the punitive damages permitted under that section. The aggregate liability of~~
 64 ~~the surety to all persons damaged by a person or firm licensed under this article may not exceed~~
 65 ~~the amount of the bond~~

§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~~ an application ~~under oath~~ with the Secretary of State in a manner
 3 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, ~~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 department of public safety 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 of each applicant.~~

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 from the department of public safety, along with a license fee of \$100 if the applicant is an
41 individual, or \$200 if the applicant is a firm, or \$500 if the applicant is a nonresident of West
42 Virginia or a foreign corporation or business entity. The license fee shall be deposited to the
43 General Revenue Fund, and shall be 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;

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 (i) Any person claiming against the bond required by subsection (h) 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.

§30-18-10. 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.

CHAPTER 39. RECORDS AND PAPERS.

ARTICLE 4A. OUT-OF-STATE COMMISSIONERS.

§39-4A-2. Powers of commissioners; official seals.

1 (a) Upon approval of a successful application, commissioners shall hold office for 10
2 years, unless removed by the Secretary of State under the grounds set forth in §39-4A-1(e) of
3 this code.

4 (b) When any oath may lawfully be administered, or affidavit or deposition taken, within
5 the state, territory or district for which any such commissioner is appointed, to be used in this

6 state, it may be done by the commissioner.

7 (c) Each commissioner shall have an official seal, which shall be a rubber stamp and shall
8 contain:

9 (1) The words "Official Seal";

10 (2) The words "Commissioner for West Virginia";

11 (3) The commissioner's name exactly as it is written as an official signature;

12 (4) The city and state of residence of the commissioner; and

13 (5) The words "My Commission Expires" and the date of expiration of the commission.

14 ~~(d) A stamped imprint of the seal, together with the official signature, shall be filed in the~~
15 ~~office of the Secretary of State~~

16 ~~(e)~~ (d) Commissioners may take, within or any place out of the State of West Virginia, the
17 acknowledgements of deeds and other writings to be admitted to the record in the State of West
18 Virginia, but each acknowledgement shall reflect where the acknowledgement was taken,
19 including, but not limited to, the state and county or territory.

20 ~~(f)~~ (e) Every certificate of the commissioner shall be authenticated by his or her signature
21 and official seal.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 2. TRADEMARKS IN GENERAL.

§47-2-1. Definitions.

1 As used in this article:

2 (1) The term "trademark" means any word, name, symbol or device or any combination
3 thereof used by a person to identify and distinguish the goods of such person, including a unique
4 product, from those manufactured and sold by others, and to indicate the source of the goods,
5 even if that source is unknown.

6 (2) The term "service mark" means any word, name, symbol or device or any combination

7 thereof used by a person to identify and distinguish the services of one person, including a unique
8 service, from the services of others, and to indicate the source of the services, even if that source
9 is unknown. Titles, character names used by a person, and other distinctive features of radio or
10 television programs may be registered as service marks notwithstanding that they, or the
11 programs, may advertise the goods of the sponsor.

12 (3) The term “mark” includes any trademark or service mark, entitled to registration under
13 this article whether registered or not.

14 (4) The term “trade name” means any name used by a person to identify a business or
15 vocation of such person.

16 (5) The term “person” and any other word or term used to designate the applicant or other
17 party entitled to a benefit or privilege or rendered liable under the provisions of this article includes
18 a juristic person as well as a natural person. The term “juristic person” includes a firm, partnership,
19 corporation, union, association or other organization capable of suing and being sued in a court
20 of law.

21 (6) The term “applicant” embraces the person filing an application for registration of a mark
22 under this article, and the legal representatives, successors or assigns of ~~such~~ that person.

23 (7) The term “registrant” as used herein embraces the person to whom the registration of
24 a mark under this article is issued, and the legal representatives, successors or assigns of ~~such~~
25 that person.

26 (8) The term “use” means the bona fide use of a mark in the ordinary course of trade, and
27 not made merely to reserve a right in a mark. For the purposes of this article, a mark ~~shall be~~
28 ~~deemed~~ is considered to be in use: (A) On goods when it is placed in any manner on the goods
29 or other containers or the displays associated therewith or on the tags or labels affixed thereto,
30 or if the nature of the goods makes such placement impracticable, then on documents associated
31 with the goods or their sale, and the goods are sold or transported in commerce in this state; and
32 (B) on services when it is used or displayed in the sale or advertising of services and the services

33 are rendered in this state.

34 (9) A mark ~~shall be deemed~~ is considered to be “abandoned “when either of the following
35 occurs:

36 (A) When its use has been discontinued with intent not to resume ~~such~~ that use. Intent not
37 to resume may be inferred from circumstances. Nonuse for two consecutive years shall constitute
38 *prima facie* evidence of abandonment.

39 (B) When any course of conduct of the owner, including acts of omission as well as
40 commission, causes the mark to lose its significance as a mark.

41 (10) The term “secretary” means the Secretary of State or the designee of the secretary
42 charged with the administration of this article.

43 (11) The term “dilution” means the lessening of the capacity of registrant’s mark to identify
44 and distinguish goods or services, regardless of the presence or absence of: (A) Competition
45 between the parties; or (B) likelihood of confusion, mistake or deception.

46 (12) “Retail value” means:

47 (A) For items that bear a counterfeit mark and are components of a finished product, the
48 regular selling price of the finished product in which the component would be utilized.

49 (B) For items that bear a counterfeit mark other than items described in paragraph (A) of
50 this subdivision and for services that are identified by a counterfeit mark, the regular selling price
51 of the item or service.

52 (13) “Sign” means the action of affixing a person’s signature to any document or record,
53 whether by manual, written or approved electronic means.

54 (14) “Signature” means any mark, symbol, facsimile or electronic mark or symbol, that
55 depicts a person’s name on any document or record, affixed to the document or record by the
56 person with the intent to authenticate, assert, certify or agree to the matters, validity, information
57 or attestation set forth in the document or record.

§47-2-3. Application for registration.

1 (a) Subject to the limitations set forth in this article, any person who uses a mark may file
2 in the office of the secretary, in a manner complying with the requirements of the secretary, an
3 application for registration of that mark setting forth, but not limited to, the following information:

4 (1) The name and business address of the person applying for such registration; and, if a
5 corporation, the state of incorporation, or if a partnership, the state in which the partnership is
6 organized and the names of the general partners, as specified by the secretary;

7 (2) The goods or services on or in connection with which the mark is used and the mode
8 or manner in which the mark is used on or in connection with such goods or services and the
9 class in which such goods or services fall;

10 (3) The date when the mark was first used anywhere and the date when it was first used
11 in this state by the applicant or a predecessor in interest; and

12 (4) A statement that the applicant is the owner of the mark, that the mark is in use, and
13 that, to the knowledge of the person verifying the application, no other person has registered,
14 either federally or in this state, or has the right to use such mark either in the identical form thereof
15 or in such near resemblance thereto as to be likely, when applied to the goods or services of such
16 other person, to cause confusion, or to cause mistake, or to deceive.

17 (b) The secretary may also require a statement as to whether an application to register
18 the mark, or portions or a composite thereof, has been filed by the applicant or a predecessor in
19 interest in the United States Patent and Trademark Office; and, if so, the applicant shall provide
20 full particulars with respect thereto including the filing date and serial number of each application,
21 the status thereof and, if any application was finally refused registration or has otherwise not
22 resulted in a registration, the reasons therefor.

23 (c) The secretary may also require that a drawing of the mark, complying with such
24 requirements as the secretary may specify, accompany the application.

25 (d) The application shall be signed ~~and verified before a notary public~~ manually in writing
26 or electronically by the applicant or by a member of the firm or an officer of the corporation or

27 association applying.

28 (e) The application shall be accompanied by three specimens showing the mark as
29 actually used.

30 (f) The application shall be accompanied by the application fee payable to the Secretary
31 of State.

NOTE: The purpose of this bill is to continue implementation of the provisions of W. Va. Code § 31D-1-131 by removing certain unnecessary or redundant requirements to allow for electronic submission of various applications and forms for nonprofit and charitable organizations, professionals and licensees. These changes are consistent with existing business and licensing electronic filing processes and capabilities now available through the Secretary of State's Office's One Stop Web Portal, which was created in the year 2017 and has been modernized to allow for full implementation of the law.

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