

**H. B. 4500**

(By Delegates Morgan, Poore, D. Poling,  
Manypenny and Sponaugle)

(By Request of the Secretary of State)

[Introduced February 13, 2014; referred to the  
Committee on Government Organization then the Judiciary.]

A BILL to amend and reenact §29-19-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §30-18-10 of said code; and to amend and reenact §30-39-6 of said code, all relating requirements for business registration; requiring charities, athlete agents, private investigators and security guards to have a valid business registration to be licensed or registered; and requiring sole proprietors to have a valid business registration certificate to be licensed or registered.

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

That §29-19-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §30-18-10 of said code be amended and reenacted; and that §30-39-6 of said code be amended and reenacted, all to read as follows:

**CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

1 **ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.**

2 **§29-19-5. Registration of charitable organizations; fee.**

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

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

21 (2) The principal address of the organization and the address  
22 of any offices in this state. If the organization does not  
23 maintain an office, the name and address of the person having  
24 custody of its financial records;

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

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

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

7           (6) A copy of a balance sheet and a statement or report of  
8 income and expenses for the organization's immediately preceding  
9 fiscal year or a financial statement reporting information showing  
10 the kind and amount of funds raised during the preceding fiscal  
11 year, the costs and expenses incidental to the fundraising and  
12 showing how the funds were disbursed or allocated for the same  
13 fiscal year: *Provided*, That in addition to the financial documents  
14 required by this subdivision:

15           (A) Charitable organizations raising more than \$200,000 per  
16 year in contributions, excluding grants from governmental agencies  
17 or private foundations, shall submit a report of an audit by an  
18 independent certified public accountant; and

19           (B) Charitable organizations raising more than \$100,000 per  
20 year but less than \$200,001 per year in contributions, excluding  
21 grants from governmental agencies or private foundations, shall  
22 submit a statement of financial review by an independent certified  
23 public accountant. Organizations are required to report the amount  
24 of money received in the state and the amount spent in the state

1 for charitable purposes;

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

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

10       (9) Whether the organization is authorized by any other  
11 governmental authority to solicit contributions, donations or  
12 grants and whether it is or has ever been enjoined by any court  
13 from soliciting contributions;

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

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

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

21       (13) The names of the individuals or officers of the  
22 organization responsible for the final distribution of the  
23 contributions; and

24       (14) Copies of all contract documentation from professional

1 fund-raising counsels and professional solicitors as provided in  
2 subsection (d), section seven of this article.

3 (15) The Secretary of State shall reject the registration of  
4 any charitable organization which does not possess the proper  
5 business registration: *Provided*, that a business registered as a  
6 sole proprietor shall provide a copy of a current, valid business  
7 registration certificate from the West Virginia Tax Department.

8 (b) Each chapter, branch or affiliate, except an independent  
9 member agency of a federated fund-raising organization, may  
10 separately report the information required by this section or  
11 report the information to its parent organization which shall then  
12 furnish the information regarding its West Virginia affiliates,  
13 chapters and branches in a consolidated form to the Secretary of  
14 State. An independent member agency of a federated fund-raising  
15 organization, as defined in section two of this article, shall  
16 comply with the provisions of this article independently. Each  
17 organization shall file a separate registration form for each name  
18 under which funds will be solicited.

19 (c) The registration forms and any other documents prescribed  
20 by the Secretary of State shall be signed by an authorized officer  
21 or by an independent public accountant and by the chief fiscal  
22 officer of the charitable organization and shall be verified under  
23 oath.

24 (d) Every charitable organization receiving less than \$1

1 million during any year which submits an independent registration  
2 to the Secretary of State shall pay an annual registration fee of  
3 \$15; every charitable organization collecting more than \$1 million  
4 during one year which submits an independent registration to the  
5 Secretary of State shall pay an annual registration fee of \$50; and  
6 a parent organization filing on behalf of one or more chapters,  
7 branches or affiliates or a single organization filing under  
8 different names shall pay a single annual registration fee of \$50  
9 for itself and the chapters, branches or affiliates included in the  
10 registration statement. All fees and moneys collected by the  
11 Secretary of State pursuant to the provisions of this article shall  
12 be deposited by the Secretary of State as follows: One-half shall  
13 be deposited in the state General Revenue Fund and one-half shall  
14 be deposited in the services fees and collections account  
15 established by section two, article one, chapter fifty-nine of this  
16 code for the operation of the office of the Secretary of State.  
17 The Secretary of State shall dedicate sufficient resources from  
18 that fund or other funds to provide the services required in this  
19 article.

20 (e) For good cause shown, the Secretary of State may extend  
21 the due date for the annual filing of a registration statement or  
22 report by a charitable organization or a professional fundraiser  
23 for a period not to exceed ninety days. During that period, the  
24 previously filed registration statement or report of the charitable

1 organization which has been granted the extension remains in  
2 effect.

3 (f) In addition to the registration fee required by this  
4 section, a charitable organization or professional fundraiser, or  
5 both, which fails to file a registration statement or report by the  
6 original or extended due date for filing as required by this  
7 section shall, for each month or part of the month thereafter in  
8 which the registration statement or report is not filed, pay an  
9 additional fee of \$25: *Provided*, That the total amount of the  
10 additional fees for a registration statement or report required to  
11 be filed in any one year may not exceed \$500. All fees and moneys  
12 collected by the Secretary of State pursuant to the provisions of  
13 this article shall be deposited by the Secretary of State as  
14 follows: One-half shall be deposited in the state General Revenue  
15 Fund and one-half shall be deposited in the service fees and  
16 collections account established by section two, article one,  
17 chapter fifty-nine of this code for the operation of the Office of  
18 the Secretary of State. The Secretary of State shall dedicate  
19 sufficient resources from that fund or other funds to provide the  
20 services required in this article.

21 **CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

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

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

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

11           (b) The Secretary of State shall reject any license pursuant  
12 to the provisions of this article to any applicant or applicants  
13 which do not possess the proper business registration: *Provided,*  
14 that a business registered as a sole proprietor shall provide a  
15 copy of a current, valid business registration certificate from the  
16 West Virginia Tax Department.

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



1 such applicant's license or application for license, including a  
2 renewal of a license. ~~Such~~ The applicant shall have fifteen days  
3 from the date of receiving written notice of the Secretary of  
4 State's adverse determination to request a hearing on the matter of  
5 denial, suspension or revocation. The action of the Secretary of  
6 State in granting, renewing, or in refusing to grant or to renew,  
7 a license, ~~shall be~~ is subject to review by the circuit court of  
8 Kanawha County or other court of competent jurisdiction.

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

18 **ARTICLE 39. UNIFORM ATHLETE AGENTS ACT.**

19 **§30-39-6. Certificate of registration; issuance or denial;**  
20 **renewal.**

21 (a) Except as otherwise provided in subsections (b) and (c) of  
22 this section, the Secretary of State shall issue a certificate of  
23 registration to an individual who complies with subsection (a),  
24 section five of this article or whose application has been accepted

1 under subsection (b), section five of this article.

2 (b) The Secretary of State may refuse to issue a certificate  
3 of registration if the Secretary of State determines that the  
4 applicant has engaged in conduct that has a significant adverse  
5 effect on the applicant's fitness to act as an athlete agent. In  
6 making the determination, the Secretary of State may consider  
7 whether the applicant has:

8 (1) Been convicted of a crime that, if committed in this  
9 state, would be a crime involving moral turpitude or a felony;

10 (2) Made a materially false, misleading, deceptive, or  
11 fraudulent representation in the application or as an athlete  
12 agent;

13 (3) Engaged in conduct that would disqualify the applicant  
14 from serving in a fiduciary capacity;

15 (4) Engaged in conduct prohibited by section fourteen of this  
16 article;

17 (5) Had a registration or licensure as an athlete agent  
18 suspended, revoked, or denied or been refused renewal of  
19 registration or licensure as an athlete agent in any state;

20 (6) Engaged in conduct the consequence of which was that a  
21 sanction, suspension, or declaration of ineligibility to  
22 participate in an interscholastic or intercollegiate athletic event  
23 was imposed on a student-athlete or educational institution; or

24 (7) Engaged in conduct that significantly adversely reflects

1 on the applicant's credibility, honesty or integrity.

2 (c) The Secretary of State shall reject the registration if  
3 the athlete agent does not possess the proper business  
4 registration; Provided, that an athlete agent registered as a sole  
5 proprietor shall provide a copy of a current, valid business  
6 registration certificate from the West Virginia Tax Department.

7 ~~(c)~~ (d) In making a determination under subsection (b) of this  
8 section, the Secretary of State shall consider:

9 (1) How recently the conduct occurred;

10 (2) The nature of the conduct and the context in which it  
11 occurred; and

12 (3) Any other relevant conduct of the applicant.

13 ~~(d)~~ (e) An athlete agent may apply to renew a registration by  
14 submitting an application for renewal in a form prescribed by the  
15 Secretary of State. An application filed under this section is a  
16 public record. The application for renewal must be signed by the  
17 applicant under penalty of perjury and must contain current  
18 information on all matters required in an original registration.

19 ~~(e)~~ (f) An individual who has submitted an application for  
20 renewal of registration or licensure in another state, in lieu of  
21 submitting an application for renewal in the form prescribed  
22 pursuant to subsection (d) of this section, may file a copy of the  
23 application for renewal and a valid certificate of registration or  
24 licensure from the other state. The Secretary of State shall

1 accept the application for renewal from the other state as an  
2 application for renewal in this state if the application to the  
3 other state:

4 (1) Was submitted in the other state within six months next  
5 preceding the filing in this state and the applicant certifies the  
6 information contained in the application for renewal is current;

7 (2) Contains information substantially similar to or more  
8 comprehensive than that required in an application for renewal  
9 submitted in this state; and

10 (3) Was signed by the applicant under penalty of perjury.

11 ~~(f)~~ (g) A certificate of registration or a renewal of a  
12 registration is valid for two years.

NOTE: The purpose of this bill is to require those registering as a charity or athlete agent, and those seeking licensing as a private investigator or security guard to have a valid business registration in this state.

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